

1 UNITED STATES OF AMERICA
2 SOUTHERN DISTRICT OF ILLINOIS

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 V.) No. 4:21-cr-40039-SMY-1
6 MINGQING XIAO,) **BENTON, IL**
7 Defendant.)

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10 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
11 DAY 7 OF 7

12 BEFORE THE HONORABLE STACI M. YANDLE
13 UNITED STATES DISTRICT JUDGE

14 May 4, 2022
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1 (Proceedings began in open court at 9:05 a.m.,
2 defendant and jury present.)

3 COURTROOM DEPUTY: The Court calls Case No.
4 21-CR-40039, *United States of America versus MingQing Xiao*.
5 This matter is called for Day 7 of jury trial.

6 would the parties please state your presence for
7 the record?

8 MR. REED: Good morning, Judge. Peter Reed, Scott
9 Verseman, and Derek Shugert for the Government.

10 THE COURT: Good morning, counsel.

11 MR. POSCABLO: Good morning, Your Honor. Ryan
12 Poscablo, Patrick Linehan, Michelle Nasser, with our client
13 Professor MingQing Xiao.

14 THE COURT: Good morning, counsel.

15 And good morning, Dr. Xiao.

16 Good morning, members of the jury.

17 I first need to advise you that Counts 1 and 2,
18 charging wire fraud, have been dismissed. The case
19 proceeds with respect to the offenses charged in Counts 3,
20 4, 5, 6, and 7.

21 Now, I am about to instruct you on the law. You
22 have a copy of the jury instructions you have been
23 provided. Those are just for your convenience. Some
24 people like to read along as I read them, but you don't
25 have to. You don't have to memorize them. You will have

1 those instructions with you in the jury room to refer to.

2 And with that:

3 Members of the jury, I will now instruct you on the
4 law that you must follow in deciding this case. Each of
5 you has a copy of these instructions to use in the jury
6 room. You must follow all of my instructions about the
7 law, even if you disagree with them. This includes the
8 instructions I gave you before the trial, any instructions
9 I gave you during the trial, and the instructions I am
10 giving you now.

11 As jurors, you have two duties. Your first duty is
12 to decide the facts from the evidence that you saw and
13 heard here in court. This is your job, not my job or
14 anyone else's job.

15 Your second duty is to take the law as I give it to
16 you, apply it to the facts, and decide if the Government
17 has proved the defendant guilty beyond a reasonable doubt.

18 You must perform these duties fairly and
19 impartially. Do not let sympathy, prejudice, fear, or
20 public opinion influence you. In addition, do not let any
21 person's race, color, religion, national ancestry, or
22 gender influence you. You must not take anything I said or
23 did during the trial as indicating that I have an opinion
24 about the evidence or about what I think your verdict
25 should be.

1 The charges against the defendant are in a document
2 called an Indictment. The Indictment in this case charges
3 that the defendant committed the crimes of "False
4 Statement" in Count 3; "False Statement on Tax Return,"
5 Count 4; "Fraud or False Statement on Tax Return," Count 5;
6 "Fraud or False Statement on Tax Return," Count 6; and,
7 "Failure to File Report of Foreign Bank Account" in
8 Count 7. The defendant has pled not guilty to the charges.
9 The Indictment is simply the formal way of telling the
10 defendant what crimes he is accused of committing. It is
11 not evidence that the defendant is guilty. It does not
12 even raise a suspicion of guilt.

13 The defendant is presumed innocent of the charges.
14 This presumption continues throughout the case, including
15 during your deliberations. It is not overcome unless, from
16 all the evidence in the case, you are convinced beyond a
17 reasonable doubt that the defendant is guilty as charged.

18 The Government has the burden of proving the
19 defendant's guilt beyond a reasonable doubt. This burden
20 of proof stays with the Government throughout the case.

21 The defendant is never required to prove his
22 innocence.

23 A defendant has an absolute right not to testify.
24 You may not consider in any way the fact that the defendant
25 did not testify. You should not even discuss it in your

1 deliberations.

2 In deciding your verdict, you should not consider
3 the possible punishment for the defendant. If you decide
4 that the Government has proved the defendant guilty beyond
5 a reasonable doubt, then it will be my job to decide on the
6 appropriate punishment.

7 You must make your decision based only on the
8 evidence that you saw and heard here in court. Do not
9 consider anything you may have seen or heard outside of
10 court, including anything from the newspaper, television,
11 radio, the internet, or any other source.

12 The evidence includes only what the witnesses said
13 when they were testifying under oath, the exhibits that I
14 allowed into evidence, and the stipulations the lawyers
15 agreed to. A stipulation is an agreement that certain
16 facts are true or that a witness would have given certain
17 testimony.

18 In addition, you may recall that I took judicial
19 notice of certain facts that may be considered as matters
20 of common knowledge. You may accept those facts as proved,
21 but you are not required to do so.

22 Nothing else is evidence. The lawyers' statements
23 and arguments are not evidence. If what a lawyer said is
24 different from the evidence as you remember it, the
25 evidence is what counts. The lawyers' questions and

1 objections likewise are not evidence.

2 A lawyer has a duty to object if he thinks a
3 question is improper. If I sustained objections to
4 questions the lawyers asked, you must not speculate on what
5 the answers might have been.

6 If, during the trial, I struck testimony or
7 exhibits from the record, or told you to disregard
8 something, you must not consider it.

9 If you have taken notes during the trial, you may
10 use them during deliberations to help you remember what
11 happened during the trial. You should use your notes only
12 as aids to your memory. The notes are not evidence. All
13 of you should rely on your independent recollection of the
14 evidence, and you should not be unduly influenced by the
15 notes of other jurors. Notes are not entitled to any more
16 weight than the memory or impressions of each juror. Give
17 the evidence whatever weight you decide it deserves. Use
18 your common sense in weighing the evidence and consider the
19 evidence in light of your own everyday experience.

20 People sometimes look at one fact and conclude from
21 it that another fact exists. This is called an inference.
22 You are allowed to make reasonable inferences, so long as
23 they are based on the evidence.

24 You may have heard the terms "direct evidence" and
25 "circumstantial evidence." Direct evidence is evidence

1 that directly proves a fact. Circumstantial evidence is
2 evidence that indirectly proves a fact.

3 You are to consider both direct and circumstantial
4 evidence. The law does not say that one is better than the
5 other. It is up to you to decide how much weight to give
6 to any evidence, whether direct or circumstantial.

7 You heard a recorded conversation. This is proper
8 evidence that you should consider together with and in the
9 same way you consider the other evidence.

10 You were shown a transcript of the conversation to
11 help you follow the recording as you listened to it. The
12 recording is the evidence of what was said and who said it.
13 The transcript is not evidence. If you noticed any
14 differences between what you heard in the conversation and
15 what you read in the transcript, your understanding of the
16 recording is what matters. In other words, you must rely
17 on what you heard, not what you read. And if you could not
18 hear or understand certain parts of the recording, you must
19 ignore the transcript as far as those parts are concerned.

20 I am providing you with the recording and a device
21 with instructions on its use. It is up to you to decide
22 whether to listen to the recording during your
23 deliberations. You may, if you wish, rely on your
24 recollections of what you heard during the trial.

25 You have heard evidence obtained from the

1 Government's use of deceptive investigative techniques.

2 The Government is permitted to use these techniques. You
3 should consider evidence obtained this way together with
4 and in the same way you consider the other evidence.

5 You have received evidence that the defendant made
6 a statement to the Federal Bureau of Investigation and
7 Homeland Security Investigations. You must decide whether
8 the defendant actually made the statement and, if so, how
9 much weight to give the statement. In making these
10 decisions, you should consider all of the evidence,
11 including the defendant's personal characteristics and
12 circumstances under which the statement may have been made.

13 During the trial, Chinese language e-mails and
14 documents were admitted in evidence. You were also given
15 English translations of those e-mails and documents. It is
16 up to you to decide whether a translation is accurate, in
17 whole or in part. You may consider the translator's
18 knowledge, training, and experience, the nature of the
19 conversation, and the reasonableness of the translation in
20 light of all the evidence in the case. You may not rely on
21 any knowledge you may have of the Chinese language.
22 Rather, your consideration of the translations should be
23 based on the evidence introduced at trial.

24 Part of your job as jurors is to decide how
25 believable each witness was, and how much weight to give

1 each witness's testimony. You may accept all of what a
2 witness says, or part of it, or none of it.

3 Some factors you may consider include:

4 The intelligence of the witness;

5 The witness's ability and opportunity to see, hear,
6 or know the things the witness testified about;

7 The witness's memory;

8 The witness's demeanor;

9 whether the witness had any bias, prejudice, or
10 other reason to lie or slant the testimony;

11 The truthfulness and accuracy of the witness's
12 testimony in light of the other evidence presented; and

13 Inconsistent statements or conduct of the witness.

14 You have heard witnesses, namely, Michael Welch and
15 Zhirong Yang, who gave opinions and testimony about certain
16 subjects. You do not have to accept these witnesses'
17 testimony. You should judge these witnesses' opinions and
18 testimony the same way you judge the testimony of any other
19 witness. In deciding how much weight to give to these
20 opinions and testimony, you should consider the witness's
21 qualifications, how he reached his opinions, and the
22 factors I have described for determining the believability
23 of testimony.

24 It is proper for an attorney to interview any
25 witness in preparation for trial.

1 Do not make any decisions simply by counting the
2 number of witnesses who testified about a certain point.
3 You may find the testimony of one witness or a few
4 witnesses more persuasive than the testimony a larger
5 number. You need not accept the testimony of the larger
6 number of witnesses.

7 What is important is how truthful and accurate the
8 witnesses were and how much weight you think their
9 testimony deserves.

10 The defendant has been accused of more than one
11 crime. The number of charges is not evidence of guilt and
12 should not influence your decision.

13 You must consider each charge separately. Your
14 decision on one charge, whether it is guilty or not guilty,
15 should not influence your decision on any other charge.

16 Count 3 of the Indictment charges the defendant
17 with concealing a material fact. In order for you to find
18 the defendant guilty of this charge, the Government must
19 prove each of the following elements beyond a reasonable
20 doubt:

- 21 1. The defendant concealed a fact by trick, scheme
22 or device; and
23 2. The fact was material; and
24 3. The defendant acted knowingly and willfully;
25 and

1 4. The defendant concealed the material fact in a
2 matter within the jurisdiction of the executive branch of
3 the Government of the United States.

4 If you find from your consideration of all the
5 evidence that the Government has proved each of these
6 elements beyond a reasonable doubt as to the charge you are
7 considering, you should find the defendant guilty of that
8 charge.

9 If, on the other hand, you find from your
10 consideration of all the evidence that the Government has
11 failed to prove any of these elements beyond a reasonable
12 doubt as to the charge you are considering, then you should
13 find the defendant not guilty of that charge.

14 A "scheme" or "device" includes any plan or course
15 of action intended to deceive others.

16 In order to prove that the defendant concealed a
17 fact by trick, scheme, or device, the Government must prove
18 that the defendant engaged in an affirmative act to
19 conceal. Simple omissions do not constitute affirmative
20 acts of concealment.

21 For the purposes of Count 3, a statement is
22 "material" if it is capable of influencing the actions of
23 the body or agency. The Government is not required to
24 prove that the statement actually influenced the actions of
25 the body or agency.

1 A person acts knowingly if he realizes what he is
2 doing and is aware of the nature of his conduct, and does
3 not act through ignorance, mistake, or accident. In
4 deciding whether the defendant acted knowingly, you may
5 consider all of the evidence, including what the defendant
6 did or said.

7 A person acts "willfully" if he acts voluntarily
8 and intentionally, and with the intent to do something
9 illegal.

10 The National Science Foundation is a part of the
11 executive branch of the Government of the United States.
12 Facts concerning an application for National Science
13 Foundation grants are within the jurisdiction of that
14 branch.

15 Counts 4, 5, and 6 of the Indictment charge the
16 defendant with filing a false tax return. In order for you
17 to find the defendant guilty of this charge, the Government
18 must prove each of the following elements beyond a
19 reasonable doubt:

20 1. The defendant prepared an income tax return;
21 and

22 2. The income tax return was false as to a
23 material matter, as charged in the Count; and

24 3. The defendant signed the income tax return,
25 which contained a written declaration that it was made

1 under penalties of perjury; and

2 4. The defendant acted willfully, that is, he knew
3 that he had a legal duty to file a truthful tax return, but
4 when he signed the return, he did not believe that it was
5 truthful as to a material matter; and

6 5. The defendant filed the income tax return with
7 the Internal Revenue Service.

8 If you find from your consideration of all the
9 evidence that the Government has proved each of these
10 elements beyond a reasonable doubt as to the charge you are
11 considering, then you should find the defendant guilty of
12 that charge.

13 If, on the other hand, you find from your
14 consideration of all the evidence that the Government has
15 failed to prove any one of these elements beyond a
16 reasonable doubt as to the charge you are considering, then
17 you should find the defendant not guilty of that charge.

18 You may infer that a tax return was, in fact,
19 signed by the person whose name appears to be signed to it.
20 You are not required, however, to infer this.

21 If you find that the Government has proved beyond a
22 reasonable doubt that the defendant signed a tax return,
23 then you may infer that the defendant knew of the contents
24 of the return. You are not required, however, to infer
25 this.

1 For the purposes of Counts 4, 5, and 6, a false
2 matter is "material" if the matter was capable of
3 influencing the Internal Revenue Service.

4 Count 7 of the Indictment charges defendant with
5 failure to file a report of a foreign bank account. In
6 order for you to find the defendant guilty of this charge,
7 the Government must prove each of the following elements
8 beyond a reasonable doubt:

9 1. Defendant was a United States person during the
10 calendar year 2019; and

11 2. Defendant had a financial interest in, or
12 signature or other authority over a bank, securities, or
13 other financial account in a foreign country during the
14 calendar year 2019; and

15 3. The aggregate value of the defendant's foreign
16 bank, securities, or other financial accounts exceeded
17 10,000 dollars at any time during the calendar year 2019;
18 and

19 4. Defendant willfully failed to file a Report of
20 Foreign Bank and Financial Accounts on or before the due
21 date following the calendar year 2019.

22 If you find from your consideration of all the
23 evidence that the Government has proved each of these
24 elements beyond a reasonable doubt as to the charge you are
25 considering, then you should find the defendant guilty of

1 that charge.

2 If, on the other hand, you find from your
3 consideration of all the evidence that the Government has
4 failed to prove any one of these elements beyond a
5 reasonable doubt as to the charge you are considering, then
6 you should find the defendant not guilty of that charge.

7 A "United States person" means a citizen or
8 resident of the United States.

9 If the defendant acted in good faith, then he
10 lacked the willfulness required to prove the offenses
11 charged in Counts 3 through 7. The defendant acted in good
12 faith if, at the time, he honestly believed the validity of
13 the statements that the Government has charged as being
14 false.

15 The defendant does not have to prove his good faith.
16 Rather, the Government must prove beyond a reasonable doubt
17 that the defendant acted willfully as charged in Counts 3
18 through 7.

19 And with that, we are ready to proceed.

20 MR. REED: At bottom, this is a simple case about a
21 series of false statements by the defendant MingQing Xiao
22 in response to straightforward questions.

23 The first set of lies came with the grant proposal
24 in September of 2018. Dr. Xiao certified to SIU-C that the
25 proposal was true and complete. And it wasn't.

1 You have all seen this Current and Pending Support
2 page many times now. The only grant Dr. Xiao lists is the
3 one he is applying for. You heard from Dr. Ou what that
4 tells NSF. *I've got nothing else going on. No other time*
5 *commitments.* That was a lie.

6 As we know, Dr. Xiao had a lot going on. He had a
7 grant in Guangdong Province and he contractually agreed
8 with Shenzhen University to do research for them. You
9 heard Dr. Xiao say he's been paid monthly by Shenzhen
10 university since 2016. And he did not disclose his
11 organizational affiliations with Shenzhen University
12 either.

13 why didn't he tell the truth? well, you heard
14 that, too, in his interview with agents. It was too
15 complicated to explain to NSF; it would make things worse
16 and harder for Dr. Xiao.

17 The second set of lies was to the IRS. Dr. Xiao
18 had a foreign bank account at Ping An Bank since 2016. He
19 shared that account information both with Shenzhen
20 University and with Mr. Cai. The same Mr. Cai he received
21 that grant with in Guangdong Province.

22 You have seen the TurboTax questions asking about
23 foreign bank accounts. You have seen the tax returns.
24 Year after year after year, Dr. Xiao signed and certified
25 to the IRS that he did not have a foreign bank account; the

1 very account he was using to receive money for the overseas
2 projects that he hid from NSF.

3 Ladies of the jury, thank you for your time and
4 attention over the last couple weeks. I'm going to walk
5 through each of the charges the judge just read for you,
6 and I'll explain how the evidence establishes beyond a
7 reasonable doubt that Dr. Xiao is guilty on all those
8 counts. But that's the case in a nutshell.

9 You heard it from the Court. Use your common sense
10 in good judgment in considering the evidence. Consider Dr.
11 Xiao's long list of false statements in light of your
12 everyday experience. He hid the truth until he couldn't
13 hide it anymore.

14 Here are the charges you are considering. We'll
15 start with the first one, making a "False Statement" which,
16 as you heard, has four elements. And we'll start with that
17 first element that "the defendant concealed a fact by
18 trick, scheme, or device."

19 "A scheme or device includes any plan or course of
20 action intended to deceive others." So, what was the plan
21 here? Well, the plan was to get the grant. What fact did
22 defendant conceal? That his proposal was false and
23 incomplete. And he did that by taking an affirmative step,
24 by telling SIU-C that the proposal was true and complete.

25 Count 3 relates to this document from Southern

1 Illinois University at Carbondale called a Proposal
2 Checklist. And as you heard from SIU-C employee Miss
3 Alongi, SIU-C requires researchers to submit this cover
4 sheet along with the proposal. That's why it's called a
5 transmittal form on the back. It's certifying what's being
6 transmitted.

7 On the second page, the researcher certifies the
8 accuracy of the proposal. That the information submitted
9 herein is true, complete, and accurate to the best of your
10 knowledge. It's signed here by Dr. Xiao on September 13
11 for the proposal he submitted to NSF on September 17.

12 And you heard Miss Alongi explain why the
13 certification exists. She has to certify to NSF that the
14 proposal is true and complete to the best of her knowledge.
15 But it's Dr. Xiao who is in the best position to know what
16 other commitments and activities he has going on.

17 So, Dr. Xiao first certifies to SIU-C that the
18 proposal is true and complete on the Checklist. Then Miss
19 Alongi signs and certifies the proposal is true and
20 complete, relying on Dr. Xiao's prior certification in
21 doing so. The two statements are nearly identical on
22 purpose.

23 So, let's start with the simple question: what did
24 NSF want to know?

25 You have seen this Current and Pending Support page

1 a number times. What did NSF want to know? They wanted to
2 know about other projects and proposals; they wanted to
3 know about other sources of support; they wanted to know
4 about money; and, they wanted to know about time
5 commitments.

6 This is a straightforward request for information.
7 Nobody in the field is confused by this. And if by some
8 chance Dr. Xiao were at all uncertain -- and there is no
9 evidence whatsoever that he was -- he could have contacted
10 NSF. And we know exactly what the Program Officer, Dr. Ou,
11 would have said. You heard it from her. NSF wants to know
12 about other positions. NSF wants to know about other
13 sources of funding, including non-US funding sources.

14 Or Dr. Xiao could have looked it up in the PAPPG,
15 where NSF explains what they want to know in very broad
16 terms. "All current project support from whatever source
17 must be listed."

18 "The proposal project and all other projects or
19 activities requiring a portion of the time of the PI" must
20 be included.

21 All means all, as Dr. Keiser told you.

22 And what did NSF want to know about organizational
23 affiliations? Well, you heard that, too, from the NSF
24 witnesses. They want to know where you have been employed
25 in the last twelve months. There are multiple blanks in

1 this table for a reason. So, that's what NSF wanted to
2 know.

3 what did Dr. Xiao say to NSF? He told NSF he had
4 nothing else going on; no other time commitments. You
5 heard Dr. Ou explain to you, that's what this form means
6 when there is nothing else listed besides the project that
7 he is applying for. It means he doesn't have any other
8 time commitments.

9 And what did Dr. Xiao tell NSF on this page? Well,
10 he told NSF that SIU-C was the only organization he had
11 worked for in the last twelve months.

12 So, we talked about what NSF wanted to know, and we
13 talked about what Dr. Xiao told NSF. Let's look about what
14 we know from the evidence we have seen this week. Well, we
15 know he had funding from a non-US funding source in
16 Guangdong Province, and we know he had a position outside
17 of the United States at Shenzhen University.

18 Start with the Guangdong Province grant. You saw
19 Dr. Xiao's grant application to the Natural Science
20 Foundation of Guangdong Province. Here it is. It's
21 Exhibit 29. You can look at it. The defense can't say it
22 doesn't exist. Maybe they'll say Dr. Xiao applied for two
23 grants in Guangdong Province, maybe they'll say three. I
24 don't know. But you saw that, a few months later, Dr. Xiao
25 told his employer SIU-C that he had gotten a grant with the

1 Natural Science Foundation of Guangdong Province. You saw
2 this sabbatical application that Dr. Xiao signed and
3 submitted to Southern Illinois University.

4 What justification did Dr. Xiao offer for seeking a
5 sabbatical? He explains it on the second page. "Recently,
6 as a co-PI, I received" -- past tense -- "an external grant
7 from China for collaboration with Guangdong University of
8 Technology."

9 And Dr. Xiao said the same thing on his CV. It's
10 Government's Exhibit 19. You can look at it. "Natural
11 Science Foundation of Guangdong Province, co-PI, RMB 1.2
12 million, 2018 through 2022, with Shuting Cai and Xiaoming
13 Xiong." At no point did Dr. Xiao ever modify these
14 statements. Never said, *No, I don't need a sabbatical*
15 *after all. I didn't get a grant.* And that's precisely
16 what he promised SIU-C he would do. He said, *I have an*
17 *obligation.* If granted leave under the conditions
18 described -- it is the grant he had received -- and he
19 knew, *I am obligated to submit a statement of revision.* No
20 statement of revision was ever filed. It's because Dr.
21 Xiao received a grant in Guangdong Province for 2018
22 through 2022.

23 And he disclosed this grant in September of 2017,
24 and it starts in '18. And leading up to January of 2018,
25 we saw he sent his bank account information to that other

1 researcher Shuting Cai. And a week later, Dr. Xiao thanked
2 Mr. Cai for his support for the research project.

3 And when -- and what did he admit to SIU-C after
4 his law enforcement interview? Well, remember this letter.
5 It's Government's Exhibit 11. It's what Dr. Xiao sent to
6 SIU-C after that law enforcement interview. And in the
7 letter he admits receiving 30,000 dollars from Mr. Cai from
8 late 2017 through 2020. He said he received a grant, he
9 said he was working on the grant, and he is sending out
10 banking information and getting money back.

11 But what did he tell NSF? I got nothing else going
12 on. And he certified to SIU-C that this statement was
13 true, complete, and accurate.

14 Next on the list, Shenzhen University. You have
15 seen a lot of information about Dr. Xiao and Shenzhen
16 University. I'm just going to hit on five high points
17 here. The first is 2016. You will have that interview
18 recording with you when you deliberate, and you can go back
19 and listen to it again, if you want. You'll hear that Dr.
20 xiao has been getting 2,000 dollars a month, every month,
21 since 2016 from Shenzhen University. Every single month.

22 January, *here's your 2,000 dollars.* February,
23 *here's your 2,000 dollars.* March, *here's your 2,000*
24 *dollars.* The very month that Dr. Xiao applied to NSF, *here*
25 *is your 2,000 dollars,* for over four years.

1 2016 is also, by the way, when Dr. Xiao opened his
2 account at Ping An Bank. You saw that account opening for
3 him. It's Exhibit 82.

4 Let's move on to 2017 and 2018. This is when Dr.
5 Xiao signed -- filed and signed that employee appraisal
6 form to Shenzhen University outlining his research
7 accomplishments. This appraisal form, here it is, it's
8 Government Exhibit 62, was for a time period, September
9 2017 through August 2018. That appraisal period is very
10 important. It ends in August of 2018, the month before Dr.
11 Xiao applies to NSF.

12 The defense claims that he wasn't working here.
13 But I'd ask you guys to use your common sense. What kind
14 of job -- or what does it mean when you submit employment
15 forms for your annual work and when you get payments every
16 month? That's a job. That's employment.

17 We know he was employed there the previous twelve
18 months. But what does he tell NSF? Well, what were his
19 organizational affiliations during those previous twelve
20 months? We know he was employed at Shenzhen University
21 because his employment appraisal form says he was employed
22 at Shenzhen University. But he doesn't tell NSF about it.

23 Back to the appraisal form. Farther down on that
24 form, Dr. Xiao reports to Shenzhen University that he's
25 published three papers in collaboration with faculty

1 members at Shenzhen University, and listing Shenzhen
2 University as the primary employer. That's research work
3 he's doing for Shenzhen University. And on the last page,
4 he attests that the information is true and accurate and
5 signs the document.

6 So, back to the timeline. The next thing that
7 occurs is that he signs a full time contract with Shenzhen
8 University for 2018 through 2023. You have seen that
9 contract. Dr. Xiao is the employee. Shenzhen University
10 is the employer. And it's signed by Dr. Xiao and it's
11 signed by Shenzhen University. The contract is for five
12 years, 2018 through 2023. That's important because Dr.
13 Xiao applied to NSF for a grant running from 2019 through
14 2021. These are overlapping obligations that NSF asked to
15 know about.

16 When he signed this contract, Dr. Xiao agreed to
17 complete these research tasks: Publish more than 15-SCI
18 indexed papers in the major field; and apply for the
19 state's major grants; and get at least one such project
20 approved. That is precisely the kind of overlapping
21 research information that Dr. Xiao [sic] testified she
22 wanted to know about when she made her decision. As she
23 said, the award size depends on what other support and
24 commitments of time you have, particularly other projects
25 whose work overlaps this one.

1 Back to the contract. Dr. Xiao agreed to work full
2 time and, in return, Shenzhen University agreed to continue
3 making payments to Dr. Xiao. Both Dr. Xiao and the
4 university signed that page, as well.

5 So, what do we know? Well, we know that Dr. Xiao
6 had a position outside the United States and that there was
7 time and money attached to that position. But we know the
8 time and money devoted to research at Shenzhen University
9 was not in the Current and Pending Support page, and we
10 know his employment was not disclosed on the affiliation
11 sheet. He hid all of that from NSF, then certified to
12 SIU-C that he was telling NSF the complete truth. And he
13 wasn't.

14 Now, did Dr. Xiao's work at Shenzhen University
15 magically end right before he submitted that NSF proposal?
16 No, of course not. We just saw the contract. It goes
17 through 2023. In a few months after he sent that contract,
18 he applied for a grant for the Natural Science Foundation
19 of China. Here it is. Dr. Xiao lists his employer as
20 Shenzhen University. And he says the same thing on the
21 resume page of that document. You can look at it.

22 He says he's a professor, not a visiting professor,
23 not a guest professor. And this resume looks very
24 different from the one he submitted NSF a month earlier.
25 Let's look at them side by side.

1 Government's Exhibit 76 is the grant application to
2 China. Government's Exhibit 1 is the grant application to
3 NSF in the United States. He tells the grant agency in
4 China that he is a professor at Shenzhen University and not
5 at SIU-C. But he tells NSF that he only works at SIU-C and
6 has no time commitments at Shenzhen University.

7 You heard Dr. Ou explain what that term "guest
8 professor" means. It means he has no time commitments
9 attached. He is lying to both grant agencies. Why?
10 Because he's overcommitted.

11 But that did not stop Dr. Xiao from claiming that
12 both grant applications were true and complete. Here is
13 the attestation from the grant agency in China, and here is
14 the attestation underlying Count 3. In reality, both were
15 false.

16 And by the way, Dr. Xiao continued to get paid
17 until at least December of 2020, every month from 2016
18 through at least 2020, 2,000 dollars a month, every month.

19 So, the next element of this Count is that the fact
20 was material. And "a statement is 'material' if it is
21 capable of influencing the actions of the body or agency.
22 The Government is not required to prove that the statement
23 actually influenced the actions of the body or agency,"
24 simply that it was capable of doing so.

25 And there were three witnesses who testified about

1 materiality for you in the last week and a half. Dr.
2 keiser told you why it matters from a big picture
3 perspective. First, NSF asks for these disclosures for a
4 reason. What else a researcher has going on is important
5 for NSF to know. They get many, many grant applications
6 and they can only award a small number of them. And they
7 use this kind of information about other time commitments
8 to make that decision, to determine the lucky few who will
9 actually get a grant.

10 Second, Dr. Keiser explained to you that when a
11 researcher hides information, it undermines the fairness of
12 the selection process. There are standards, there's a
13 process that's followed, and there are other applicants who
14 are honest and truthful.

15 Third, Dr. Keiser explained to you that dishonesty
16 on the grant application poisons the entire enterprise. If
17 you are not honest on the grant application, then you
18 cannot trust the research either.

19 SIU-C employee Miss Alongi also testified about
20 materiality. She explained, as I said earlier, that Dr.
21 xiao makes an attestation to SIU-C. He says, *This is true*
22 *and complete*. She relies on that statement to then turn
23 around and tell NSF that the proposal is true and complete.
24 And you heard her say, *If I had known, if I had any reason*
25 *to believe that that proposal was not true and complete, it*

1 *could have affected my decision to submit the grant.*

2 And third, you heard from Dr. Ou, who also
3 testified about materiality. She explained to you that
4 each of Dr. Xiao's omissions would have been an important
5 piece of information for her to know. And she explained
6 that each of those lies and omissions was separately
7 capable of influencing her decision to make the grant
8 recommendation.

9 As she told Dr. Xiao, the award size depends on
10 what other support and commitments of time you have,
11 particularly other projects whose work overlaps with this
12 one. Dr. Xiao's false statements were material.

13 So, the third element is the defendant acted
14 knowingly and willfully.

15 "A person acts 'willfully' if he acts voluntarily
16 and intentionally, and with the intent to do something
17 illegal." Look, we all know Dr. Xiao acted knowingly. All
18 activities means all activities. You heard the length the
19 defense took to try to claim that all somehow doesn't mean
20 all. That words like organization and current are hard to
21 understand. Use your common sense and good judgment. Dr.
22 Xiao is by all accounts a highly educated and intelligent
23 person and this is what he does professionally. He knew
24 what he was doing.

25 He also knew that making false statements on the

1 proposal was illegal and could subject him to criminal
2 penalties. It says so right here: Any false, fictitious,
3 or fraudulent statements or claims may subject you to
4 criminal penalties.

5 And he acted willfully. NSF made a straightforward
6 request for information. If Dr. Xiao chooses to answer
7 honestly and fairly, he may not get the grant, or he may
8 get less money. But if he chooses to lie, then he may get
9 the grant and the prestige that comes with it.

10 You heard Dr. Keiser talk about what getting an NSF
11 grant means to an academic like Dr. Xiao, the prestige that
12 comes with it. It's a simple choice. Lie and get the
13 grant; tell the truth and risk losing the grant. That's
14 willfulness. And he did that repeatedly.

15 He left his Guangdong grant off his Current and
16 Pending Support sheet. He left his research obligations at
17 Shenzhen University off of this sheet. And he hid his
18 employment at Shenzhen University on the organizational
19 affiliations page. And then he told SIU-C that it was all
20 true and complete.

21 His intent is also shown by his interview with law
22 enforcement in December of 2020. Again, you'll have that
23 interview. You can go back and listen to it. You will
24 hear agents ask Dr. Xiao, *Have you ever been a professor*
25 *employed by a university in China before?* And you will

1 hear Dr. Xiao's answer. *Not employee.* We all know that
2 isn't true. We have seen his employee ID card. We have
3 seen his Employee Appraisal Forms that he submitted to
4 Shenzhen University.

5 Once it became clear that Dr. Xiao is not being
6 honest with agents, they asked him a more specific
7 question: *Do you have a contract with them?* Dr. Xiao
8 again did not tell the truth. *Not like a contract,* he
9 said. But we all know that isn't true, either. We have
10 seen the contract.

11 And when asked, *Hey, why didn't you just reach out*
12 *to NSF, lay it all out on the table?*

13 Dr. Xiao, you will hear, responded: *Yeah, I think*
14 *should I do that, but I just didn't do it at the time.*

15 *Why not?*

16 *Well, because it would make things complicated and*
17 *be hard to explain because it would make things worse.*

18 But telling the truth isn't complicated. It isn't
19 hard. It doesn't make things worse. It's only hard to
20 explain if he wanted to get the grant. It's a simple
21 choice. Lie and get the grant, or tell the truth and risk
22 losing the grant. Dr. Xiao chose to lie and that's acting
23 willfully. So, that's element three.

24 Move down to element four: "The defendant
25 concealed the material fact in a manner within the

1 jurisdiction of the executive branch of the government of
2 the United States."

3 The material fact concealed by Dr. Xiao was in a
4 matter within the jurisdiction of the executive branch.
5 Facts concerning an application for the Natural Science
6 Foundation grants are within the jurisdiction of that
7 branch.

8 In this particular Proposal Checklist involved
9 federal funds from NSF, as Dr. Xiao says at the top of the
10 Checklist. In his statement that the proposal was true and
11 complete was a fact concerning an application for a Natural
12 Science Foundation grant. Thus, it was within the
13 jurisdiction of the executive branch.

14 Because each of these elements has been proven
15 beyond a reasonable doubt. The Government asks that you
16 find Dr. Xiao guilty on Count 3.

17 That brings us to the tax Counts, making a false
18 statement on tax returns. This offense is five parts.

19 The first part is easy. The defendant prepared an
20 income tax return. You have seen the income tax returns
21 prepared by Dr. Xiao in 2017 and 2018 and 2019. You heard
22 Revenue Agent Welch explain that in his experience the
23 return is typically prepared by the first individual listed
24 on the return, and that's Dr. Xiao. And you heard Dr. Xiao
25 tell agents that he does his own taxes on TurboTax.

1 COURTROOM DEPUTY: Five.

2 MR. REED: Second. Dr. Xiao's return each year was
3 false as to a material matter.

4 Let's look at what we know. Government's Exhibit
5 82 is the translation of this bank form. The form shows
6 that Dr. Xiao is the account holder of an individual
7 account at Ping An Bank. It shows Dr. Xiao had the account
8 in May of 2016. And it shows the location of the bank,
9 Shenzhen branch, Shenzhen University sub branch, in China.
10 It's a foreign bank account. And we saw that Dr. Xiao
11 attested to the truthfulness of this information.

12 we looked at this second blue form as well, same
13 exhibit. This form shows that Dr. Xiao still had an
14 account at Ping An Bank in 2019. We saw the bank card from
15 Ping An Bank. And we saw transactional data from that
16 account pulled up from Dr. Xiao's cell phone. And we saw
17 Dr. Xiao's post Indictment admissions that he had this
18 account in 2017, in 2018, and in 2019. That's what we
19 know.

20 Here's what Dr. Xiao told the IRS. *At any time*
21 *during 2017 did you have a foreign bank account?*

22 Dr. Xiao told the IRS, *No*. He made that answer in
23 2017. He made that answer in 2018. He said it again in
24 2019. And once again, that false statement was material.
25 That is, it was capable of influencing the IRS.

1 As Revenue Agent Michael Welch explained, U.S.
2 Banks report information directly on Form 1099, but foreign
3 banks do not. So, the IRS asks taxpayers directly, "Do you
4 have a foreign bank account?" And that information is
5 capable of influencing the IRS. The IRS might, for
6 example, ask for more information about the account or they
7 may determine whether additional tax is owed.

8 The next part of the offense is that the defendant
9 signed a tax return under penalties of perjury. You saw
10 those attestations. They're in evidence. It's
11 Government's Exhibit 93, 94, and 95.

12 Here is one of them. It says, "Under penalties of
13 perjury, I declare that I have examined this return and
14 accompanying schedules and statements, and to the best of
15 my knowledge and belief, they are true, correct, and
16 accurate."

17 The fourth element is that "The defendant acted
18 willfully, that is, he knew that he had a legal duty to
19 file a truthful tax return, but when he signed the return,
20 he did not believe that it was truthful as to a material
21 matter."

22 So, this is two subparts, right? The first is the
23 defendant knew he had a legal duty to file a truthful tax
24 return. That part is straightforward. The return has to
25 be truthful. You saw the statement -- the attestation.

1 He also knew when he signed the return that it was
2 not truthful as to a material matter. And you saw the
3 TurboTax slides. It says in big writing "foreign bank
4 accounts or trusts." Dr. Xiao likely saw one these slides
5 in 2017 and affirmatively clicked that he did not have a
6 foreign bank account, and he did the same thing in 2018,
7 and he did the same thing in 2019.

8 And it's not like he forgot that the account
9 existed. We saw him sending the bank account information
10 to Mr. Cai. And we saw him sending the bank account
11 information to Shenzhen University. And we heard and we
12 saw that he was receiving regular deposits into that
13 account. He had well over 100,000 dollars in that account
14 by 2019. You can look at his post Indictment admissions
15 and his delinquent FBARS and you can look at those cell
16 phone screenshots.

17 Instead, Dr. Xiao told agents he wasn't sure if the
18 money in the account was his. But is that really an honest
19 explanation for the false statement on Dr. Xiao's tax
20 returns? This money that he had been receiving from
21 multiple sources? Not at all. Go back and listen
22 carefully to that interview, while thinking about the
23 actual question on the tax return. And I think you'll hear
24 Dr. Xiao acknowledge, no other person or entity was on that
25 account. It's a bank account. It's Dr. Xiao's bank

1 account. And it's in a foreign country. Full stop. Dr.
2 xiao knew that he had a foreign bank account but he told
3 the IRS he did not.

4 This second set of lies echoes what we talked about
5 earlier. It's a straightforward question and it only is
6 complicated if you are trying to hide what's going on. Dr.
7 xiao answered it falsely year after year after year.

8 So the final element is, "The defendant filed the
9 income tax return with the IRS." You saw that the returns
10 were electronically filed with IRS through TurboTax, and
11 you have seen the actual returns received from the IRS.

12 Because the Government has proven each of these
13 elements and each of these offenses beyond a reasonable
14 doubt, the Government asks you to find Dr. xiao guilty of
15 all three of these charges.

16 And that takes us to the last one, "Failure to File
17 Foreign Bank Account Report." This has four elements.

18 First. " Defendant was a U.S. person." As you
19 heard, Dr. xiao is a U.S. person. You saw his passport and
20 you know he resides here in Illinois.

21 Second. " Defendant had a financial interest in, or
22 signature authority over, a bank, securities, or other
23 financial account in a foreign country during the calendar
24 year 2019."

25 We just went over that. I won't tell it to you

1 again. We know he had a foreign bank account and we know
2 he had it in 2019.

3 Third. "The aggregate value of the defendant's
4 foreign bank account...exceeded 10,000 dollars during
5 calendar year 2019." Well, you heard Agent Welch explain,
6 it had over 100,000 dollars by this time.

7 And, fourth. The defendant willfully failed to
8 file a report on or before the due date following the
9 calendar year 2019."

10 Well, you heard Agent Welch explain, the due date
11 is going to be the tax year day April 2020. There's an
12 automatic extension to October 20. But you know, as you
13 heard, that he did not file a timely FBAR during that time
14 period.

15 So, the last part of this is the defendant acted
16 willfully. And again, it has two parts, right?

17 The first, Dr. Xiao knew he had a legal duty to
18 report the account. Well, you heard him tell agents that.
19 You can go back and listen. It's the very end of the
20 recording. He knew and he understood that he had to report
21 a foreign bank account over 10,000 dollars. He said he
22 looked it up. He said he got the information. And he said
23 he knew that information when he filed his taxes in 2019.
24 You can listen to it.

25 The other subpart of this element is that he acted

1 intentionally. Dr. Xiao's failure to file that report was
2 intentional. It was a continuation of the same conduct we
3 have seen time and time again. He lied to SIU-C and NSF.
4 He lied to IRS. And he didn't report the foreign bank
5 account, which he knew he had to report.

6 Because the evidence proves each of these elements
7 beyond a reasonable doubt, the Government asks that you
8 find Dr. Xiao guilty on Count 7.

9 The evidence in this case shows a long string of
10 lies in response to straightforward questions from NSF,
11 from SIU-C, and from the IRS. In response, Dr. Xiao made a
12 simple choice. He chose to hide the truth over and over
13 again, until he couldn't hide it anymore. He chose to lie
14 and to cheat to advance his career. The evidence you have
15 seen and heard proves that beyond a reasonable doubt.

16 Based on that evidence, the judge's instructions,
17 and your own common sense and good judgment, we ask you to
18 hold defendant accountable and find him guilty on all five
19 of these Counts.

20 Thank you.

21 THE COURT: Okay. Before we proceed with the
22 closing argument on behalf of the defendant, we're going to
23 go ahead and take a break. We'll take a 15-minute break
24 and we will reconvene at 10:15.

25 COURTROOM DEPUTY: All rise.

1 (Court recessed from 10:02 a.m. to 10:15 a.m.)

2 (Proceedings continued in open court, defendant and
3 jury present.)

4 THE COURT: You may proceed, Mr. Poscablo.

5 MR. POSCABLO: Thank you, Your Honor.

6 Good faith. Members of the jury, for the last two
7 weeks, you probably never really had to think about what it
8 means to act in good faith. But once you heard that term
9 in this courtroom, each of you knew exactly what it meant.
10 Your gut, your heart, your mind, your common sense tells
11 you when people are acting in good faith.

12 And you also know when people aren't being honest
13 with you. Like when someone comes to your door in the
14 middle of the winter of COVID, and they tell you that they
15 are there for an immigration issue. And they tell you that
16 your Chinese name is similar to someone who traveled to
17 Wuhan, where COVID began.

18 And even when you welcome them in, and you offer
19 them a seat, they begin berating with you, working with a
20 team member, to ask you the same questions over and over
21 and over again. Constantly rephrasing your answers and
22 constantly putting words in your mouth. No one -- and I
23 mean no one -- has the mental energy or dexterity to
24 withstand that type of verbal attack from two federal
25 trained agents. No one.

1 But you heard testimony and you saw evidence of
2 Professor Xiao's good faith and his clear conviction. You
3 heard him tell Agent Bockelmann and Agent Morris many times
4 that he did not believe that the money in China -- in the
5 Chinese bank account was his, and he didn't earn it. And
6 you don't have to just trust Ming's words because his
7 actions, his actions speak loudly.

8 Agent Welch told that you Professor Xiao didn't
9 touch the money. And you saw this exhibit. Government
10 Exhibit 91, which shows you that in 2017, 2018, zero
11 expense. The only expense you see is in 2019 when
12 Professor Xiao returned to China.

13 Ming didn't touch the money. Indeed, Agent
14 Dalechek told you, consistent with Ming's passport, that
15 after Ming's initial visit in 2016, Ming didn't go to China
16 again for several years. He didn't go in 2017. He didn't
17 go in 2018.

18 And in 2019, he took two trips, one a personal one
19 to bring his mother's ashes to Malaysia and to attend a
20 family wedding, and a second trip where he visited
21 Shenzhen. And again, the evidence shows that he didn't
22 touch that account. He didn't touch that money.

23 How else can you trust that Professor Xiao put --
24 what Professor Xiao says was true? Because both Agent
25 Dalechek and Agent Bockelmann told you that they secretly

1 recorded him because they expected he will be more likely
2 to tell the truth and answer questions truthfully if he
3 didn't know that he was being recorded. They told you that
4 if they show up with a recording device or told Professor
5 xiao about it, he would be less likely to tell them the
6 truth and be less forthcoming.

7 Your belief that Professor Xiao acted in good faith
8 is vitally important -- it is vitally important, members of
9 the jury. Because if you find that Professor Xiao acted in
10 good faith, if you find that at the time he honestly
11 believed the validity of the statements that the Government
12 charge with being false, then you must -- you must acquit
13 him. You must acquit him of the remaining Counts in this
14 Indictment.

15 Judge Yandle instructed you that, quote, a
16 defendant does not have to prove his good faith. It was
17 the same point that Miss Nasser made two weeks ago, when we
18 selected you to be a part of this jury. The burden of
19 proof is always, always on the Government. They charged
20 this man. And the responsibility of proving the crimes
21 they have charged is on them, always.

22 Now, I think this is a good point to go over the
23 remaining charges, to explain to you the Government's
24 burden, and to tell you the story of Ming, to piece
25 together the various pieces of evidence and testimony that

1 you heard and you read and you reviewed. And I submit to
2 you that at the end, you will find Professor MingQing Xiao
3 not guilty of all the remaining crimes that the Federal
4 Government has charged him with.

5 Count 3 of the Indictment charges Professor Xiao
6 with concealing a material fact by trick, scheme, or
7 device, and that he did so willfully, and that he did this
8 by falsely certifying to SIU-C -- not NSF -- to SIU-C that
9 the grant proposal to NSF was true, complete, and accurate.
10 That's what they charged him with.

11 Yesterday, you heard the testimony of Dr. Scott
12 Ishman, the former Interim Dean of the College of Science
13 at SIU-C. Dr. Ishman is a geology researcher and he,
14 himself, has served as a Principal Investigator on many NSF
15 grants through SIU-C.

16 Now, we showed Dr. Ishman Government Exhibit 4.
17 And Mr. Reed went over this. It's the Proposal Checklist.
18 This is the form that the Government claims is the basis
19 for Count 3. And it is this form that the Government
20 claims Professor Xiao made a false statement. That he knew
21 was false.

22 Now, remember what the Government said. They said
23 that the material fact that Professor Xiao concealed was,
24 one, his guest professorship at Shenzhen and, two, his
25 Guangdong Province grant.

1 Now, I showed Dr. Ishman this form. You remember,
2 we went over it. And this is a form that he signed many
3 times, both as PI and also as the Dean of the College.

4 Dr. Ishman pointed out to you that this language,
5 which is right above Dr. Xiao's signature, exists. And it
6 says, "By signing below, you agree that you have read and
7 approved the contents of this Proposal Checklist." There
8 is no reference here to the actual proposal. There is no
9 reference here to any attachment or exhibit.

10 Now, Dr. Ishman then read to you the language in
11 the box directly where Professor Xiao signed. It reads:
12 "By signing this transmittal form, you are certifying that,
13 one, the information submitted herein is true, complete,
14 and accurate to the best of your knowledge."

15 Dr. Ishman told you that he understood that PIs who
16 signed this were certifying to this document, which
17 involves questions that are important to the University.
18 Questions concerning human subjects or vertebrate animals;
19 human stem cell research; issues concerning export control;
20 and the most important page -- at least according to Kelly
21 Alongi -- cost sharing.

22 You remember I asked her some questions about that.
23 And she said this was really important to her because if
24 someone signed this and checked the box, SIU-C would be on
25 the hook for some of the research costs. This document was

1 important to SIU-C. This is what Professor Xiao was
2 certifying.

3 A plain and simple reading of this document,
4 members of the jury, supports Dr. Ishman's position. Now,
5 let me point one other thing to you as further support. He
6 pointed you to the language in the "other required
7 signatures" part, where it specifically says that the
8 "fiscal officer has thoroughly reviewed this checklist and
9 accompanying documents and approve the proposed scope of
10 work." So, when they wanted someone to certify that they
11 were going to look at the attachments? They wrote that in.
12 When they didn't, they didn't. And Dr. Ishman told you,
13 what was important to him was the budget. He wanted to
14 make sure that it made sense.

15 So, here's the point. Before we even start talking
16 about the underlying documents, the references to Current
17 and Pending and the Biosketch -- which I'm sure you all
18 know much better than some people who are actually applying
19 for grants -- you can find Professor Xiao not guilty of
20 this Count if you believe that this form is only asking him
21 to attest to the truth and accuracy of this form. And
22 there's no evidence that he lied on this form.

23 There is no evidence that Professor Xiao concealed
24 a material fact knowingly and willfully by trick, scheme,
25 or device. There is no evidence that any material fact on

1 this form has been concealed.

2 Now, the Government wants you to believe that the
3 certification that Dr. Xiao signed attests or swears to the
4 accuracy of the NSF grant proposal. It does not. And
5 here's another reason why. The certification on this page
6 is a certification that the Principal Investigator --
7 that's Professor Xiao -- is making to the University.

8 The items on this page that the PI is attesting to,
9 that's what matters to SIU-C. It matters to them because
10 it brings up a whole host of compliance issues for them.
11 If stem cell research is involved, if vertebrate is
12 involved, if animals are involved.

13 And here's one more reason. Notice the date on
14 this Proposal Checklist. Mr. Reed pointed it out.
15 Professor Xiao signed it on September 13 of 2018. That is,
16 he certifies this document on September 13th, 2018.

17 Now look at this e-mail between Professor Xiao and
18 Kelly Alongi. The Government offered this entire e-mail
19 chain. This is Government Exhibit 6. Kelly Alongi
20 testified that this e-mail was between her and Ming and it
21 related to the NSF grant proposal at issue.

22 Now, we put on the screen for you the e-mail
23 starting on September 13, 2018. And that's -- remember,
24 that's the date that he signed the Proposal Checklist.
25 Read the e-mail:

1 "Hello MingQing. I have reviewed the proposal in
2 Fastlane, and I have the following comments and questions."

3 She then proposes a bunch of edits, a bunch of
4 things. Now, if you take that down and go to -- if you
5 look at the whole e-mail, it continues. They have a back
6 and forth from September 13th all the way to September 17.
7 And that was the day that the NSF proposal was submitted by
8 Kelly Alongi, which she did on September 18, if you recall.

9 Now, here's the point. Professor Xiao signed the
10 Proposal Checklist before the NSF proposal itself was
11 finalized. Why would he certify a document that had not
12 been finalized? That's because he doesn't sign it. Kelly
13 Alongi signs it. That's why she's having this back and
14 forth with him. He can't and is not certifying in this
15 document a proposal that has not yet been finalized.

16 But I submit to you that even if the Government
17 were correct, even if you believe that Professor Xiao was
18 certifying the attachments, which he's not, or the
19 exhibits, which he's not, in this form -- in this form
20 alone -- there is no proof that MingQing Xiao concealed a
21 material fact by trick, scheme or device.

22 Now, I understand that the Government is claiming
23 that the two material facts were concealed -- right? -- the
24 Shenzhen University guest professorship and this
25 make-believe and nonexistent grant from Guangdong Province.

1 The Government has argued that Professor Xiao
2 falsely certified this Proposal Checklist. This is
3 confusing. You have to say it out loud a couple times.

4 The Government has argued that Professor Xiao
5 falsely certified this Proposal Checklist because his NSF
6 grant proposal concealed two material facts. And again,
7 those two material facts are Shenzhen and Guangdong so,
8 let's go over each of those.

9 As to the Shenzhen University guest professorship,
10 the Government wants you to believe that he concealed it
11 from the NSF because he put it on one section of the grant
12 proposal and not the other. Now, your common sense should
13 tell you that that's ludicrous. This is just silly.
14 Because you heard Dr. Keiser and you heard Dr. Ou and you
15 heard all the testimony, that they review the entire
16 proposal. They don't split it up. They don't say, *Hey,*
17 *you review this part, I'll review this part, and then we'll*
18 *come together.*

19 The Program Director reviews the entire document.
20 It is just silly to say that he didn't tell them about his
21 guest professorship. But let's go on.

22 Their first claim is that he didn't put Shenzhen
23 University in this Organizational Affiliations section.
24 But remember the testimony that was given about this
25 section. Dr. Keiser and Dr. Ou gave a little bit of

1 resistance to this. But what they ended up saying to you
2 is that this section is intended to protect NSF from
3 putting somebody from SIU-C in your panel. They don't want
4 your buddy from SIU-C or your buddy from your nonprofit to
5 serve as a panelist to decide whether you do or do not get
6 the NSF grant. No one claims that someone from Shenzhen
7 was placed on Professor Xiao's panel. And you know why?
8 Because Shenzhen was listed on the document. And we showed
9 this to Dr. Ou and we showed this to Dr. Keiser.

10 Now, because Shenzhen was already listed on this
11 document, they were already excluded from the list. This
12 argument is just silly. And it's silly to argue that
13 Professor Xiao was concealing -- that's the operative term
14 for Count 3, concealing -- his relationship with Shenzhen
15 by not placing it in this section.

16 Now let's talk about Current and Pending. The
17 Government's second argument is that Professor Xiao is
18 guilty of Count 3 because he concealed his guest
19 professorship by failing to place it on this page, the
20 Current and Pending page.

21 Now, first, common sense should tell you that this
22 form is not about guest professorships. Just look at the
23 structure of the form. The questions themselves tell you
24 that. If they wanted to know about guest professorships,
25 they would have had questions that focused on guest

1 professorships. But it doesn't. It focuses questions on
2 grants and proposals, and your common sense to tell you
3 that this argument by the Federal Government is a stretch
4 at best.

5 Testimony showed you that this is about research.
6 It's about research proposals. It's about research grants.
7 That's what the questions asked. Dr. Keiser, whose job it
8 is to enforce the rules? Now, she wants you to believe
9 that guest professorships that have a research component
10 should be listed in here somehow. Her point was about
11 research, about duplicative work, about the Pilot example I
12 told you about. There is no evidence of that in this case.

13 Now, let's look at the Biographical Sketch. And
14 now this is why the Government's argument about this is
15 just silly, because Professor Xiao clearly and
16 unambiguously listed his guest professorship with Shenzhen
17 in his Biographical Sketch. It's silly because for years
18 Ming listed his Shenzhen guest professorship in every NSF
19 application he had. He wasn't hiding it. Everyone knew
20 about it. He told NSF about it. He told SIU-C about it.
21 He told OSPA about it.

22 And SIU-C was promoting this relationship because
23 -- guess what? -- SIU was bleeding its students. Its
24 enrollment was down. It was trying to promote these
25 international collaborations. And there is no question

1 that he was doing the work. That the work was done.
2 Because when his first NSF grant was coming to an end, he
3 was extended by one year without pay. That was his offer
4 to NSF. And as you heard during trial, that was during the
5 same period that he had this guest professorship at
6 Shenzhen.

7 No one, no one complained that he had a commitment.
8 No one complained that the work was not done. And you
9 didn't hear anyone at OSPA asking him about it because no
10 one cared. He had been listing it in the Biographical
11 sketch for years. No one told him to put in a different
12 part of a grant application.

13 And in fact, you heard Dr. Pericak-Spector, who
14 just kept spelling yesterday. She kept spelling and
15 spelling. There was a lot of letters coming out of her
16 mouth when she introduced herself. And she told you that
17 she lists her guest professorships in the Biographical
18 sketch. Now, I anticipate that the Government's going to
19 say, *well, the difference is, he got paid.* But that fact,
20 that fact that he had a reimbursement agreement, it doesn't
21 take away from the ridiculousness of the argument that it
22 should have been here and not here. Because each of those
23 individuals look at the whole document. And if they had a
24 question, they could have just asked him.

25 They are telling you that this charge -- they

1 charged this man. They charged him with a federal crime
2 because he didn't list his guest professorship on page two
3 or three instead of on page seven.

4 Please, see the ludicrousness of that argument and find
5 him not guilty of this count.

6 Now, the Government keeps talking about a contract.
7 I'm going to shift gears. But for a variety of reasons,
8 you can just discard their arguments. Sometime in 2018,
9 you saw in some of the emails that the Government showed
10 you, Professor Xiao was contemplating taking a longer
11 sabbatical leave to teach in China. And that's what those
12 e-mails with Professor Tang show. Look at them.

13 Remember that Professor Tang was at Shenzhen, was a
14 visiting scholar at SIU-C. So, he was just trying to
15 reciprocate the collaboration. Now, in order to work in
16 China, you need a work visa. Not the Q2 visa that Agent
17 Dalechek said he didn't know about. You need a work visa.
18 And you heard the stipulation between the parties
19 concerning the work visa and the Q2 visa.

20 Remember that the Government didn't put this
21 exhibit into evidence. We did. I did. Special Agent
22 Dalechek testified this was a document that they
23 translated; that was translated by their interpreter, Mr.
24 Yang. But they didn't offer it. I did. And that's
25 because this document says, *In order for you to work in*

1 *China, you gotta quit your job. You gotta separate. And*
2 Ming didn't want to do that, so he didn't get a work visa
3 and he didn't quit his job and he didn't go to Shenzhen.

4 Let's move forward in the interest of time to
5 Government Exhibit 46.

6 The Government showed you this document. This is
7 the NSFC grant. There's no testimony about this grant. If
8 you recall, the Government didn't offer the denial letter.
9 Ming didn't get this grant. They didn't offer that. We
10 did. And it had a Government Exhibit sticker on it. They
11 only showed you the grant application itself. And they
12 showed it to you to say that Professor Xiao listed himself
13 as a professor at Shenzhen. But you know from the evidence
14 and your common sense that he was not an employee at
15 Shenzhen and he never left the United States.

16 Let's go to the Defense Exhibits 504, 505.

17 Now, you haven't see this document, but it was a
18 document that was offered into evidence as part of a
19 stipulation between the parties. It is -- it shows the
20 U.S. Department of State per diem at Shenzhen.

21 And you heard Kathy Pericak tell you about per
22 diems. I submit to you that if you look at the rate of the
23 hotel, look at the per diem rate, and you calculate the
24 cost of a trip to China, the 24,000 dollars is roughly the
25 equivalent of two trips to China, for two weeks at a time.

1 Now, I submit to you that there is no evidence that
2 Dr. Xiao was conducting research activities for Shenzhen
3 University, which is really the critical issue underpinning
4 the Government's argument. You heard testimony from
5 Special Agent Dalechek, where he admitted that he found no
6 research papers where Dr. Xiao listed any school other than
7 SIU-C. Always listed SIU-C as his school. At best, the
8 Government offered evidence that Professor Xiao was
9 mentoring some students who came to SIU-C from China.

10 So, here's the bottom line. This section is not
11 the place where one places information regarding their
12 guest professorships. Common sense tells you that.

13 Let's talk about the Guangdong Province grant.
14 Now, there is one more claim. And in their closing -- I
15 can't even believe that they're still pursuing this -- they
16 claim that Professor Xiao lied on his NSF grant proposal
17 and falsely certified the form -- again, the Proposal
18 Checklist -- because he didn't list this nonexistent
19 Guangdong Province grant on his NSF grant proposal.

20 I don't want to spend too much time on this because
21 Special Agent Dalechek testified that the grant offered by
22 the Government in this Exhibit 29 is not the grant that
23 they are claiming was on the NSF grant. And you remember
24 that; right? I asked him to memorize spectral matrix sets.
25 Neither of us knew what that meant, but he memorized it.

1 And what it showed was that this application was a
2 continuation of his 2014 work for NSF. This had nothing to
3 do with the -- what he thought was going to come as a grant
4 from his sabbatical application. You can look at those
5 documents yourself.

6 The only point I want to make is, is that you
7 didn't hear any evidence, didn't hear any testimony that
8 showed you there was a formal proposal, that there was a
9 research, that there was a proposal number. You didn't see
10 any evidence about a grant amount or the transfer grant
11 awards. It just doesn't exist here.

12 And in fact, Special Agent Dalechek testified that
13 he didn't see any other curriculum vitae other than this
14 one where Professor Xiao listed it.

15 Now we also -- we also offered into evidence
16 Government Exhibit 17, which is the leave report from that.
17 And, you know, Professor Xiao put it in his sabbatical
18 leave -- put it in his sabbatical leave after it was
19 completed. You're going to see that. You'll see that
20 Ming didn't talk about a Guangdong Province grant because
21 he didn't work on a Guangdong Province grant while he was
22 in China during his sabbatical. And remember that.

23 We showed you a document that showed that, and it
24 was Defendant's Exhibit 88. It was a Memorandum from David
25 DiLalla that talked about when you needed to report to

1 SIU-C. *You need to talk about dates, length, or pay*
2 *status.* That's all they wanted to know about. They
3 weren't concerned with what you were working on. They
4 wanted to make sure that you weren't going to extend your
5 time or get -- or they would have to pay you more.

6 Ladies and gentlemen, I submit that the Guangdong
7 Province grant exists in the same way that my rainbow
8 unicorn outside exists. It doesn't. There's no Guangdong
9 Province grant, just like there is no rainbow unicorn.

10 Now, in his closing argument, the Government also
11 referenced this e-mail from Dr. Ou. Now, I submit to you
12 that these are completely irrelevant. And here's why. The
13 Dr. Ou e-mail? And the NSFC China grant? Occurred after,
14 after the Proposal Checklist. He couldn't certify
15 something that he had not done yet. So, I think you can
16 just discount that.

17 Now, there's a part of the call that I wanted to
18 touch base upon again, and I'll talk about the call again
19 later.

20 Can I have a time check, Miss Hurst?

21 COURTROOM DEPUTY: 34 minutes.

22 MR. POSCABLO: Spent or left?

23 COURTROOM DEPUTY: Left. I'm sorry.

24 MR. POSCABLO: Remember during the call when
25 Professor Xiao was talking about trying to figure out where

1 he should list his guest professorships? He said he tried
2 to get on research.org, but he couldn't figure out where to
3 put it. And that makes sense to you now, right?

4 Because if you look at his response to Professor Ou
5 -- to Dr. Ou, he doesn't talk about his -- what was the
6 word that they used? -- position. It was not a term that
7 was in the P-A-P-P-G -- the PAPPG. It was new to him and
8 he didn't understand what it meant. It wasn't -- you look
9 at the Current and Pending, it doesn't ask for your
10 position.

11 So, when she sent him that e-mail, he looked on the
12 website to see, *well, what does that mean and how do I put*
13 *it in there? I already have it in there.* And then what he
14 told the agent was, he couldn't figure it out. And he
15 figured that he already had it in there and they knew about
16 it, and so he didn't do anything more with it.

17 Members of the jury, before I move away from
18 Count 3, which we ask you to find Professor Xiao not guilty
19 of, I want to talk about a word that Judge Yandle mentioned
20 in her instruction to you. She discussed the word
21 "willfully." And she told you that a person acts willfully
22 if he acts voluntarily and intentionally and with the
23 intent to do something illegal. Do something illegal. You
24 have to have that intent in order for you to find that his
25 actions were willful.

1 voluntarily, intentionally, again, with the intent
2 to do something illegal. And I offer to you that this is
3 the most important thing for you to consider with regards
4 to Count 3, and even more so with regards to the tax
5 charges and the FBAR charge.

6 For each of those Counts requires Professor Xiao to
7 have acted willfully, as well. So, you need to say and you
8 need to determine that he did those things with the intent
9 to do something illegal. And I submit to you that they
10 don't have that. The mere existence of the bank account in
11 China? The mere fact that he didn't do an FBAR? That's
12 not the intent to do something illegal.

13 Now, when you go back and you talk about Counts 4
14 and 5, and 6, and 7 -- you're going to talk about 3 -- I
15 ask you to hold the Government to its burden. It's their
16 burden. Hold them to the burden of ensuring that they have
17 met every element of every crime. Every element. And I
18 submit to you that when you go through it that way, you
19 will find that the Government has failed to meet its
20 burden.

21 I'm going to review those elements with you
22 shortly, but let me give you a recap of what you heard this
23 week regard to these Counts. It felt like a long two
24 weeks. But at the end of the day, the Government really
25 just called two witnesses related to the tax charges. They

1 called Miss Skelly, who was from TurboTax, Intuit, and she
2 led us through the five slides that the Government offered.
3 Now, Miss Nasser had like a million slides. But,
4 fortunately, we didn't have to look at all those. Right?
5 we looked at about 15. And we'll go over a couple of those
6 slides today.

7 And you also heard from the second witness, and
8 that's Mr. Welch. And what did Mr. Welch tell you? He
9 told you that he did no independent investigation about
10 this case. I asked him about four questions about it. And
11 his answer was the same. *I did no independent*
12 *investigation of this case.* Because his purpose was to
13 talk to you about why it's important that, for the IRS, the
14 taxpayers inform the Government about their foreign
15 holdings.

16 In 2016, a bank account, at Ping An Bank was open.
17 You remember this document. Agent Welch and I went back
18 and forth about it. He called it a signature card. And I
19 showed him the Government's translation. And he admitted,
20 *well, it looks more like an application form.* It's not a
21 signature card.

22 And -- but I do submit to you that this document
23 shows that an account was opened at the Shenzhen Branch in
24 Shenzhen University. But there is no evidence to show who
25 opened the account. All you have is the evidence that it's

1 in Ming's name. I'm only saying that because you gotta
2 hold the Government its burden; what they did prove and
3 what they did not prove.

4 Now, after the account is opened, a very small sum
5 was used in 2016. I went through this exhibit with you
6 already. But you will see that the activity in 2019
7 coincides with Ming's travel to China. And you know this
8 to be true because you can review his passport, which is
9 Government Exhibit 180. But we prepared this demonstrative
10 to show you Ming's work. And if you look at it, it shows
11 that he went there in 2016. He then went there in 2019.
12 And so, you know, it's the entry and exit. That's why you
13 have two. And he only went there three times. And Special
14 Agent Dalechek confirmed that.

15 My point is this: You can believe Professor Xiao's
16 statement to the agents that he didn't think this money was
17 his because he didn't touch it, he didn't spend it on
18 personal items, and this is reflected in the evidence that
19 you saw.

20 But I offer to you that there is a nuance for you
21 here. There is something else I want you to think about.
22 It isn't just about, *he didn't think that the money was*
23 *his*. It's that he didn't think it was income. You have
24 heard him describe during the call -- during the recorded
25 interview with him that he thought he was just getting

1 reimbursed. That's what he said. It was a travel
2 reimbursement and it was intended to cover his travel, his
3 hotel, his airline, and a per diem. And you know from
4 common sense, and I explained it earlier, that that was
5 about 24,000 dollars. You saw the per diem rates with the
6 Department of State.

7 Now, the issue in the back of your minds may be,
8 *well, if he didn't go there, why were they still depositing*
9 *money?* well, listen to Ming's explanation to the agents.
10 Listen to it. And you can tell that he doesn't really know
11 either. what he should have said to them is, "Go ask
12 Shenzhen. I haven't been back there." Because there is no
13 question that he didn't go back there. And there is no
14 question that, other than mentoring some students who came
15 from China to SIU-C, and occasionally helping them with
16 their papers, he didn't travel to China. And he struggles
17 with his answer to the agents because he doesn't know the
18 answer himself. Listen to it. The best that he can say
19 is, *well, I figure, when I go back to China, I'll talk to*
20 *them about it and I'll either give it back to them or I'll*
21 *give it to charity.* And that's an honest answer from a man
22 who is answering honest questions.

23 But please remember, it is irrelevant to the
24 question before you with regards to the tax charges. The
25 amount that's in there, the purpose of the payments, why

1 Shenzhen is continuing to deposit that money. It's
2 irrelevant. And here is why: The tax counts, Counts 4
3 through 7, it's about Ming's mindset. It's about whether
4 he believed that that money was his, and whether he
5 believed that that money was his income.

6 And I submit to you that his actions and his words
7 support what he told those agents, that he did not think
8 that this was his money; he did not treat it like his
9 personal funds.

10 And there's one more thing I want you to consider.
11 Because everyday Americans like you, like me, we make
12 mistakes on our taxes. Oftentimes, things like having to
13 pay a tax on your jury per diem is missed by people who
14 aren't used to serving on a jury and then having to pay a
15 particular tax.

16 And more often than not, people who make these
17 mistakes? They're allowed to correct them. They don't get
18 indicted for tax fraud. And that's because of the word I
19 mentioned a few moments ago. That's the word willfully.
20 I'm going to say it again. Judge Yandle told you that a
21 person acts willfully if he acts voluntarily and
22 intentionally, and with the intent to do something illegal.
23 I submit to you that there is no proof that he had the
24 intent to do something illegal.

25 And you know from your time listening and reading

1 and reviewing that there is no evidence that Professor Xiao
2 acted with the intent to do something illegal.

3 If you recall, I asked Mr. Welch some of these
4 questions:

5 "Were there any LLCs or other companies?"

6 *I don't do any independent investigation.*

7 "Did you find any homes in China?"

8 *Sir, I didn't do any independent investigation.*

9 "So, were there fancy cars or expensive items?"

10 *I didn't do any internal -- any additional*
11 *investigation.*

12 well, clearly he didn't do any internal independent
13 investigation. But it's clear to you that the money in
14 Shenzhen just stayed there.

15 And I submit to you, members of the jury, that Mr.
16 Welch is not the only person who didn't do any independent
17 investigation. Because you have seen no evidence, none,
18 other than what Ming filed and what he voluntarily shared
19 with the agent and what he said during the interview.

20 And that, members of the jury, the information that
21 you do have, is simply insufficient for you to find that
22 Ming acted willfully or with the intent to do something
23 illegal. And this is really important.

24 Because simply having a bank account in China does
25 not satisfy the willfulness requirement. Let me say it

1 again: Simply having the bank account in China does not
2 satisfy the willfulness requirement. Let me say something
3 very similar: Simply not filing an FBAR does not satisfy
4 the willfulness requirement.

5 And as you know, Professor Xiao was originally
6 indicted in this case in April of 2021, and the tax charges
7 were added more than five months later. Now, in that time,
8 as you learned, Professor Xiao tried to fix his mistake.
9 You saw that in the delinquent FBARS that he filed for
10 calendar years 2017, 2018, and 2019. And you saw that he
11 did it in April of 2021, more than five years before the
12 Government then charged him with anything.

13 He tried to fix his mistake and they used these
14 late FBAR filings against him. Now, you saw -- because I
15 showed it to Mr. Welch -- that the FBAR language itself
16 concerns -- discusses the Streamline Domestic Offshore
17 Procedure. And that was a program to permit tax filers to
18 fix their mistakes.

19 Members of the jury, I ask you to imagine what Ming
20 was thinking because there's simply no evidence that he
21 willfully filed a false tax return. Indeed, the evidence
22 shows that this is a man who recognizes his mistakes and
23 then tries to fix them.

24 Now, as I noted earlier, the Government offered
25 only two witnesses related to this, Miss Skelly and Mr.

1 welch. Interestingly, neither of them told you that Ming
2 himself prepared the joint tax return. It was muddled.
3 Neither of them told you that he prepared it. Miss Skelly
4 merely says that someone filed this joint tax return for
5 MingQing Xiao.

6 Now, listen, I understand. This is a
7 hypertechnical argument. I know that. But if you hold
8 them to their burden, I offer to you, I submit to you, that
9 they haven't met this hypertechnical argument in this
10 hypertechnical case. And I submit that they can't even
11 prove the first element of Counts 4 to 6, that Professor
12 Xiao prepared this joint income tax return.

13 Now, they're going to argue in rebuttal that Ming
14 talked about TurboTax during his interview. He did. I'm
15 just asking you to hold them to their burden because I want
16 to you look at what he said -- listen to what he said.

17 Now, as to the second element. The Government's
18 going to argue that the income tax return falsely answered
19 this question: "At any time during" -- insert year, 2017,
20 2018, 2019 -- "did you have a financial interest in or
21 signature authority over a financial account (such as a
22 bank account, securities account, or brokerage account)
23 located in a foreign country?" And this appeared in 2017
24 and it appeared in 2019. And the Government told you it
25 says no.

1 But I want to raise two issues related to this
2 statement. The first is that this language, "the language
3 that says financial interest in or signature authority over
4 a financial account," it exists nowhere in TurboTax. Look
5 at the slides. It exists nowhere.

6 Now, Miss Skelly told you that it doesn't exist in
7 all of TurboTax. It only exists if you print out the form
8 and you read it. And we know from Miss Skelly that there
9 is no evidence -- you saw no metadata -- no other
10 information that Professor Xiao looked at the paper copy
11 online or that he printed it out.

12 So, here's my point: If TurboTax doesn't ask you
13 this question directly, how could he have lied willfully on
14 Paragraph 7a in Schedule B? The answer is, he didn't.
15 Indeed, remember her testimony, Miss Skelly. She says
16 nothing about whether Professor Xiao signed the income tax
17 return or whether he or someone else filed it. I know it's
18 hypertechnical, but I need you to look at it.

19 And that's when Miss Nasser had a whole
20 conversation with her about wet signatures. First time I
21 had heard that phrase. And she showed you all the
22 asterisks. Right? There were all these asterisks.
23 There's no wet signature there.

24 Now, I challenge these things. Again, I raise
25 them. Because the burden is on these guys. The burden is

1 on the Government to prove these elements to you beyond a
2 reasonable doubt. And I submit to you that on these
3 elements, it has failed to do so.

4 Now, let me spend a few minutes talking about the
5 TurboTax slides -- actually, I'll do that at the end. I
6 don't want to belabor the point, but I will talk about a
7 couple of the slides. Let's turn to Count 7.

8 Count 7 charges Professor Xiao with failing to file
9 a report of a foreign bank account -- a report of a foreign
10 bank account. It's called an FBAR. F-B-A-R.

11 Here, as with the previous accounts we discussed,
12 I'm going to ask you to focus on the issue of willfulness.
13 Because there's no evidence that Ming willfully failed to
14 file this report. There's no evidence that he failed to
15 file this report with the intent to do something illegal.
16 And how else do you know this? Because Miss Skelly, the
17 TurboTax lady, she told you that you if you click "no" on
18 the question of whether you had an account? You don't get
19 led anywhere else. It doesn't lead you to a page that
20 says, *Hey, now you gotta file an FBAR*. You don't get to
21 the screen that the Government showed you.

22 Members of the jury, I'm on my last topic. And I
23 saved it for last because, man, it was an important point
24 during this trial. You heard Ming's voice and you heard
25 him talk to the agents honestly. And when the Government

1 played that secret recording -- I mean, I'm not going to go
2 play it for you today, and I don't intend to revisit what
3 Agent Bockelmann did and what Mr. Morris did and what they
4 said to get themselves there. But I do think it's
5 important to talk to each of you about all of the questions
6 that they asked.

7 And when I talk to but their demeanor and their
8 tone, and I want to talk to you about Ming's demeanor and
9 his tone, and I want to talk to you about Professor Xiao's
10 good faith when he talked to them and he gave them truthful
11 answers.

12 Now, as you heard, Ming invited them in. They
13 didn't tell him about the search warrant when they walked
14 in; they didn't tell him about the recording device; and,
15 they didn't tell him they were going to interview him for
16 hours. They didn't tell him that they had been
17 investigating him for grant fraud. Not tax fraud. Grant
18 fraud. Because they didn't even know he had a bank account
19 in China. He told them that. They didn't do any
20 investigation about that. They sent no subpoenas to
21 Chinese banks and they sent no request to China.

22 Now, when they started questioning Ming about his
23 travels, he willingly produced his passport and he answered
24 truthfully about his travels. He told them that he didn't
25 travel to China last year, and he certainly didn't go to

1 wuhan. And at no point during the interview did Ming
2 challenge the agents. At no point during the interview did
3 he ask them to stop. At no point during the interview did
4 he ask them for a lawyer. And that's because, members of
5 the jury, MingQing Xiao was acting in good faith. When he
6 spoke about his family in China and his parents' history in
7 Malaysia and the burial site where he was bringing his
8 mom's ashes? You heard the agents' answers. "Yes."
9 "Gotcha." "Cool." "Right."

10 Because they weren't listening. They were waiting
11 for the time to get their questions to him. They were
12 doing that to establish rapport with Professor Xiao, to
13 make him comfortable.

14 Now, their first question to him doesn't come up
15 until about 20 or 25 minutes later. And they say to him,
16 Mr. Morris does, *Plus, your grant to China came up as well.*
17 Now they tried to sneak that in. And you know what Ming
18 said? *I don't have any grants in China.* That was as true
19 then as it is now. Ming did not have any grants in China.

20 Ming then explains his work with Shenzhen. He
21 tells them about it. He's excited about it. And he tells
22 them that he understands his agreement to be a
23 reimbursement agreement. It's meant to cover the cost of
24 his travel. He tells them about Professor Tang, who he
25 talked about, was a visiting professor at SIU-C, and Ming's

1 friend and contact at Shenzhen, who is trying to help Ming
2 build a collaboration between the two schools.

3 They then move to the next topic on their
4 Checklist. The Government's Checklist. And they sneak in
5 there, *well, have you done any work or gotten paid from the*
6 *Natural National Science Foundation of China?* Again, Ming
7 answers truthfully. He says no. They already knew this.
8 They knew this because you saw we offered the document that
9 -- where that, that -- that foundation denied his
10 application. But they asked him anyway. And they asked
11 him again about the Shenzhen relationship, and he says
12 again, *That wasn't my money.*

13 Now, at this point, about halfway through the
14 interview, the topic of the bank account in China comes up.
15 Ming takes out his phone and he asked them, *Do you want me*
16 *to show you?* And he does it. And they take photos of it.
17 Right? There's a whole conversation when he goes, you mean
18 like this? Snap. And you heard it.

19 Again, Ming is acting in good faith. Man, he had
20 no reason to distrust these agents or their intentions.
21 And once they see that he had a bank account in China, the
22 tenor of the conversation changes because that's what they
23 wanted to, that's when they needed to, and that's when they
24 had to get Ming to say that he knew that that money was his
25 and that he failed to report it.

1 You see, members of the jury, these trained federal
2 agents? They were trying to get Professor Xiao to admit
3 each of the elements of that crime. And what was Ming's
4 response? Did he stop talking? Did he ask them to leave?
5 Did he ask for a lawyer? No, no, and no. He continued to
6 dutifully answer their questions, even as they asked the
7 same ones over and over.

8 He gave them their space to make their longwinded
9 soliloquies, which are not evidence here. But he corrected
10 them where it matters; he told them the money wasn't his;
11 he did not believe it was his; and, that he didn't touch
12 it.

13 Now, I want to talk about two other things to
14 clarify what happened here. You heard talk about a
15 plagiarism investigation that was weighing heavy on
16 Professor Xiao's mind and there's some confusion there
17 about what Ming was talking about. Now remember, at this
18 point, he thinks they're here to talk about immigration.
19 He thinks they're here to talk about travel. He thinks
20 they're here to talk about his travel and Wuhan.

21 He did not know -- and they never told him -- that
22 they were here to talk about the NSF grant from 2018. So,
23 when they start asking him questions about it, Professor
24 Xiao was in the middle of preparing a rebuttal to the
25 issues related to the first grant. So, he was confused.

1 Listen to it. You heard it in his answers. He tells them
2 that he never expected to actually get the 2018 grant,
3 because he was in the middle of defending himself related
4 to the 2014 grant. And then the agents kept restating what
5 he was saying and they kept putting words in his mouth.

6 Now, this is important because the agents then ask
7 him a question about this Chinese bank account, and they
8 ask him this question: "Do you have any foreign
9 investments or foreign bank accounts?"

10 And he responds, "I didn't see it. I didn't see
11 it."

12 And if I have time, I'm going to show you how he
13 didn't see it.

14 Can I have time check, Miss Hurst?

15 COURTROOM DEPUTY: Ten minutes, 33 seconds left.

16 MR. POSCABLO: Thank you.

17 I want to quickly go over the rest of that call,
18 because they ask about the Guangdong Province grant as
19 well, about 75 percent of the way in. And he tells them, *I*
20 *don't have -- I don't know what you are talking about. I*
21 *don't know what that grant is.* And it is at this point, at
22 the end, where the agents turn to a different technique
23 which is the berating. Right? They have worn you down.
24 They did the rapport thing. *Hey, we're here to investigate*
25 *something easy.* Then they ask you some questions to get

1 you there. And then they start really digging in on you.
2 And if you listen to it, they just kept answering and --
3 asking him questions and they would restate what he said.
4 And I tell you again, no one has the mental energy and
5 dexterity to compete with two federally trained officers.

6 But Professor Xiao did his best. And if you listen
7 to the words, he wouldn't say things that were just not
8 true. And he said to them, *I always think I won't get this*
9 *grant*. Meaning the 2018. And he tells them again and
10 again that that money was not his.

11 Members of the jury, from everything you have heard
12 from the Government's witnesses, from the defense's
13 witnesses, and everything you have seen both in the
14 documents that the Government showed you and the documents
15 that they didn't show you, but we have showed you,
16 Professor MingQing Xiao, a nerdy mathematics professor, a
17 father of three, a resident of Makanda, a beloved
18 colleague, he acted in good faith and he did the best that
19 he could.

20 This case is only simple when you don't do any
21 additional investigation. This case is only simple if you
22 jump to conclusions. This case is only simple if you don't
23 want to uncover the truth.

24 MingQing Xiao owned up to his mistakes and he took
25 steps to fix them. If anything, members of the jury, I

1 think MingQing Xiao is guilty of one thing. He's guilty of
2 being human, as we all are. But that doesn't make him
3 guilty of these crimes.

4 His lack of willfulness makes him not guilty of
5 these crimes. His good faith makes him not guilty of these
6 crimes. When you go back to that jury room and you talk
7 about these Counts, we ask you to look at the evidence, to
8 read the instructions from Judge Yandle, and we ask you to
9 return a verdict of not guilty on all Counts.

10 Thank you for your time.

11 THE COURT: You have about a half an hour left.
12 I'm going to leave it to you guys. Do you want to take a
13 short break or do you want to just move right through?
14 Anybody need a break?

15 JURORS (in unison): (Nonverbal response.)

16 THE COURT: Okay.

17 MR. SHUGERT: Members of the jury, for you to
18 believe the defense's version of the truth, for you to
19 accept their version of reality for this relevant time
20 period, you have to accept three things:

21 One. You have to accept the defendant lied. The
22 Guangdong Province, their defense, never existed. Right?
23 You can see on the screen in front of you, the defendant
24 tells his employer in an application to justify paid leave
25 from the University, "I received" -- I got it. It's mine,

1 past tense -- "I received a grant from the Guangdong
2 Province." In their version of events, this is a lie;
3 right?

4 Also, this is reflected in the accompanying CV.
5 His employer says, *You are mentioning a new thing here,*
6 *this grant. Please update your CV.* He got caught. So, he
7 had to put it on there.

8 Also, you will have to accept that the defendant
9 lied about Shenzhen University to the extent that he is
10 telling Shenzhen University he will be a full-time
11 employee. So, in their version of events, he lies to
12 Shenzhen. He has no intention of being a full-time
13 employee with all the perks and the benefits and the annual
14 salary.

15 And their version of events, he lies to the
16 National Natural Science Foundation of China. It's right
17 there. He puts, "My employer is Shenzhen University."

18 So, the first thing you will have to accept, if you
19 want to believe their version of events, is that he lies.
20 Just conveniently, not to the NSF, not for the conduct that
21 the Government is charged.

22 The second thing that you will have to accept, if
23 you are going to buy what they're selling, you will have to
24 accept that this individual who has multiple Master's, a
25 Ph.D, post Ph.D education, is confused by the words like

1 "all" and "current" and "pending" and "bank account."

2 The same person who can write in English those ten
3 publications that are listed, and that's just the first
4 ten. It has 77. That defies common sense. The Government
5 asked you, I asked you, the very beginning of this trial, I
6 will only ask three things of you: Please follow the
7 evidence; follow the judge's instructions; and, follow your
8 own good judgment and common sense.

9 The idea that the words "all" or "current" or
10 "pending" or "bank account" would be confusing does not
11 mesh with common sense.

12 The other thing along these lines, this second
13 thing you'll have to accept? This box -- how much time did
14 the defense spend on this box, line by line, word by word,
15 letter by letter? But he fills it out just fine when it's
16 something he's okay with NSF knowing. It's all there.
17 There's a title. There's money. There's time. We went
18 through all this. But when it's okay for NSF to know about
19 it, no problem filling it out.

20 The third thing you will have to accept if you are
21 going to take their version of events as true, you will
22 have to believe it is everyone else's fault except for his,
23 for his choices, his omissions, his lies. Everyone else is
24 to blame. TurboTax is to blame because they ask questions
25 at an eighth grade reading level to make it easier for the

1 taxpayer. The IRS is to blame. Because they ask about the
2 foreign bank account to all taxpayers at the time they ask
3 about interest and dividends.

4 The university is to blame -- and the defense would
5 love if the university was to blame. The university is to
6 blame because they did not train the defendant in how to
7 fill out a form. A form that he filled out just fine when
8 he wasn't trying to hide something. That is what the
9 defense version of reality will require of you.

10 The Government is asking of you the same three
11 things I asked at the very beginning: Follow the evidence;
12 follow the judge's instructions; use your own good judgment
13 and common sense.

14 Now, in the remaining time, I wrote down some of
15 the points that the defense raised during their closing
16 argument, things that they believe create a reasonable
17 doubt. Now, I'd like to go through these one by one.

18 The defense said the defendant was cooperative and
19 truthful with the FBI. He cooperated. He was there. He
20 answered their questions.

21 I would ask you to listen to that recording again.
22 It is obvious he got caught in his lies to NSF; he got
23 caught having a foreign bank account that he never reported
24 that had money in it; and, he tried to find excuses to get
25 out of it. We can list the excuses when you read the

1 recording -- or you listen to the recording. He denies
2 there's a contract with Shenzhen. You saw it. It's in
3 evidence. There is a contract.

4 He says disclosing would be complicated. You saw
5 the form. You saw the application. You saw the e-mail.
6 Those are not complicated questions.

7 Didn't expect it to go through. It's another
8 excuse. Tried to log in. Internet's confusing, too.
9 That's another excuse. He was frustrated. He was in a bad
10 mood. Another excuse.

11 The defense said during closing, he never
12 challenged the agents. Right? He never challenged them.
13 We just went through the excuses. I submit to you that
14 that is challenging them. It might not be argumentative,
15 it might not be raising your voice or threatening to run,
16 but he is listing excuses that slowly get chipped away.

17 Shows his phone to the agents because he got
18 caught. It's the same reason -- and we'll get to this --
19 that he files that delinquent FBAR. Files delinquent FBARS
20 after he is indicted for the false statement, for the fraud
21 related to NSF. Then he submits those delinquent FBARS.
22 It's the same reason. He got caught.

23 FBI didn't tell the defendant why they were there
24 to interview him. Right? The -- the reason why they knock
25 on the door is a different reason why they are there.

1 First of all, that is perfectly appropriate. There's no
2 evidence -- there is none -- that that is not an allowed
3 practice.

4 And no one can withstand that sort of pressure or
5 those sorts of questions. The agents were professional.
6 They were courteous. Yes, it can be intimidating if
7 federal agents are asking you questions, especially when
8 you have false statements to hide, foreign bank accounts to
9 hide, money in those bank accounts that you have never
10 reported. Sure that can be pretty scary, I bet. Nothing
11 about the setting of that interview changes the defendant's
12 lies to the University, to NSF, and to the IRS. Nothing.

13 No investigation in China. No legal process or
14 anything like that for China. We know why. We heard Agent
15 Dalechek say why. Government in China doesn't cooperate.
16 That's why. Pretty straightforward. They wouldn't have
17 gotten him.

18 All right. These are in no particular order, so
19 we'll jump around.

20 TurboTax is confusing. Okay. Second thing that I
21 mentioned that you will have to believe to accept their
22 version of reality? The defendant is confused despite his
23 advanced education and everything else we know about him at
24 this point, confused by these common everyday words. So,
25 TurboTax asking questions at an eighth grade reading

1 comprehension level, employing people whose only job is to
2 write these questions grammatically correct, with proper
3 syntax, so they're easy to understand. That's confusing?

4 The question in the Schedule B, "Do you have
5 financial interest in, or signature authority over, a
6 foreign account" -- parens, all those examples -- "located
7 outside the United States?"

8 I will submit to you, what is easier to understand?
9 Do you have a foreign bank account or do you have all of
10 those things listed on the Schedule B? TurboTax is
11 designed to be easier. Which also gets to point three.
12 The third thing. You will have to accept, for their
13 version of reality, everyone else is to blame. So, it's
14 TurboTax's fault; right? That's what they would like for
15 you to believe. But we saw year after year after year, he
16 answers no. He sees the question. He knows he has a bank
17 account. It's got money on it. He's got an app on his
18 phone. And he answers no.

19 Didn't sign his tax return. I believe Mr. Poscablo
20 called this a technical argument, or maybe that was with
21 the filing or the preparing. Again, his own words from the
22 recording. "I use TurboTax." "I do my own taxes." TurboTax
23 software, Government's Exhibit 102. It is signed with a
24 PIN. That is what happens when you electronically sign
25 your tax returns.

1 Every taxpayer in America who electronically files,
2 electronically signs. You have an individual PIN. You
3 heard Agent Welch say that. He is the primary filer. It
4 is his name as the primary filer. His Social Security
5 number as the primary. His e-mail as the primary. His
6 PIN, primary. There is sufficient evidence beyond a
7 reasonable doubt that he signed his tax returns.

8 He didn't file. These are going to be very similar
9 things. I won't belabor the point. You saw Government's
10 Exhibits 96, 97, and 98. Primary. Primary. Primary.
11 Primary. It's him. It's his information. It's his name.
12 It's his Social Security number. Again, his own
13 statements. Again, the testimony of Agent Welch.

14 Didn't prepare his returns. Maybe someone else
15 prepared. Again, same argument. Please remember what the
16 Government asked of you at the very beginning, for your
17 common sense. It is a theme. Right? It is something that
18 we have said a few times. Because hypertechnical
19 arguments, things that defy logic, you can usually avoid
20 those, defeat those with just common sense.

21 FBARs filed after the initial Indictment for his
22 lies to NSF. It is not improper for the Government to
23 charge someone when it discovers misconduct. That is the
24 Government's role, the FBI, the Department of Justice, it's
25 what we do. Filed late FBARs, after he is indicted. He

1 did not tell the truth until he just could not get away
2 with it anymore. That's what that is. That's why he
3 filed.

4 Filed the FBAR to correct a mistake. No. He filed
5 the FBAR because he got caught. He had agents at his
6 house. Then he gets indicted. It's just other charges at
7 that point. There's no tax charges on there. So, he goes
8 and he submits that FBAR. He got caught.

9 Only two witnesses. The Government only presented
10 two witnesses and spent a brief amount of time on these tax
11 charges. Well, that is because, as my co-counsel told you
12 during his closing argument, this is at bottom a simple
13 case. You have lies to the university on that Checklist;
14 you have lies to NSF about what you are doing; and, you
15 have lies to the IRS about your foreign bank account and
16 all the money in there.

17 You remove all of this other stuff about university
18 policies and university documents and people are to blame
19 who aren't the defendant. The case is pretty simple. So,
20 yes, the Government called two witnesses and they showed
21 you -- the documents showed you, the testimony showed you,
22 the defendant opened an account in China in 2016. It's his
23 name. He's the only name on there. He then has an app on
24 his phone to track that money, his money.

25 You'll see on that 2019 delinquent FBAR, 2019, he

1 has two CD's now. He doesn't just have the Ping An bank
2 account. He has, with Ping An Bank, two CD's. He's moving
3 stuff around. That's his money. Why do we put things into
4 cd's? To earn interest on our money.

5 No additional investigation. The Government would
6 offer, *what additional investigation was needed?* Pretty
7 clear, he's got a foreign bank account in China. Pretty
8 clear, there's money in it. Pretty clear, he never listed
9 it on his taxes and he never listed it to the Department of
10 Treasury. Pretty clear, he's doing things in China and not
11 telling NSF.

12 The defense says certain things are not, in and of
13 themselves, crimes. Having a foreign bank account is not a
14 crime. True. Not reporting it to the IRS? That's a
15 crime. Not telling the Department of Treasury -- FINCEN --
16 when that account has over 10,000 dollars? That's the
17 crime.

18 All right. No fancy cars, no big houses, no big
19 money. Right? The Government has never once alleged that
20 this is about money. Never once. This is about the
21 prestige. His career depends on these types of grants.
22 Look at his CVs. His CVs are dozens of pages. And they
23 list grants. They list publications. The first page, five
24 lines for employer. Five lines for other things. It's all
25 about the grants. That's what happens in academia. You

1 need these grants to advance your career. Never once have
2 we said this is about the money.

3 what I just told you, Dr. Keiser said, here on the
4 stand. *It is important in academia to get these grants.*
5 The defense's own witnesses that they called, highly
6 accomplished in academia. One of the first things they
7 talk about, NSF grants. And they're so accomplished,
8 right? *How many NSF grants did you get? How much money*
9 *did you give 'em?* That's because that's what's important,
10 that's why. Not the money.

11 Every day, people make tax mistakes. The
12 Government would ask you, when you listen to the recording,
13 does an everyday person know about the 10,000-dollar
14 reporting requirement for FBARS? Because the defendant
15 did. That's on the recording.

16 Tax returns. No willfulness. So, how do we prove
17 -- how do we prove he acted willfully; right? Well, let's
18 start with the fact, he's got these bank accounts. They've
19 got over 10,000 dollars in them -- sorry, one bank account,
20 over 10,000 dollars in it, for these years. Never files an
21 FBAR. Doesn't want the IRS to know. It's pretty easy to
22 just check the "no." But once you click the "yes" and then
23 you gotta submit this form and you might have to pay and
24 then -- hmm -- it's a little bit trickier. Right? That's
25 evidence of willfulness.

1 You heard him on the recorded interview. He knows
2 about that 10k reporting requirement. That's evidence of
3 willfulness.

4 Does his own taxes. He saw the question year after
5 year. The question designed for eighth graders. He saw it
6 every year. "DO you have a foreign bank account?" That's
7 evidence of willfulness.

8 Same argument about the FBAR. Willfulness. The
9 Government would offer to you the same reasons. How do we
10 prove willfulness? The same evidence that we prove
11 willfulness for the foreign tax -- for the foreign bank
12 account, the false tax returns. It's the same for the FBAR
13 charge.

14 If you look at the money in there in 2019, moving
15 it into two CD's, you can also use that as evidence of
16 willfulness. He's moving the money around.

17 We already addressed that one. Okay. Save time.

18 The money wasn't his. Right? The money wasn't
19 his. He says that on the interview. Mr. Poscablo mentions
20 it a few times. Again, go back and listen to the
21 recording. Because eventually his excuses start to wear
22 away and he does say, *yeah, theoretically that's my money.*
23 At first, like a kid caught -- right? -- with their hand
24 in the cookie jar? No, no, not this. Not that. But
25 eventually, *yeah, theoretically, that's my money.*

1 He admits to withdrawing it when he's in China.
2 He's the only name on the account. You look at the FBAR
3 from 2019, Exhibit 106, he's moving it into CD's to earn
4 interest on the money. And he has an app on his phone. He
5 knew the money was his.

6 Again, willfulness, in relation to Count 3.
7 Defense talked a bit about that. How many documents did we
8 see with the defendant's signature, certifications, other
9 folks' signatures and certifications, relying on
10 information that could only be provided by the defendant,
11 where they say under penalty of law that they're signing
12 it, it's true, it's complete, it's accurate, either from
13 him or based on the information provided by him. Look at
14 Government's Exhibit 4 as an example.

15 The e-mail to Dr. Ou from NSF is, is not important.
16 Look at how the defendant answers that question. The award
17 size depends on what you are about to tell me. And he
18 says, *I don't have anything*. As my co-counsel said, *I*
19 *ain't got nothing else going on*. Right?

20 The question is pretty clear. "Do you have you a
21 foreign position?" "Do you have foreign funding?" If so,
22 time commitments, money, just let me know these things
23 because the award size depends on your answer to this
24 e-mail.

25 Perhaps NSF was a little too trusting about this.

1 That e-mail is important. It is proper for you to
2 consider. It is his own statement. It is his own lie.

3 Nonexisting grant proposal. Air quotes,
4 nonexistent. Okay. So, it's nonexistent in their version
5 of reality. This gets back to what I said at the very
6 beginning. You are going to have to accept some things, if
7 you are buying what they are selling. Nonexistent. Well,
8 we showed you the application for the defendant that he
9 submits to get a grant from the Guangdong Province of
10 China. We then show you, months later, where he tells his
11 employer, *I got it. I received it.*

12 We show you e-mails where he is e-mailing his
13 counterpart in China and saying, *Here's my bank account*
14 *information*, so he can get paid from this grant.

15 The Government would offer to you that it does
16 exist because we showed you it existed. Because the
17 evidence shows the application, his own words, his own
18 statement to his employer saying that he got it.

19 COURTROOM DEPUTY: Five minutes.

20 MR. SHUGERT: Thank you.

21 Okay. Guangdong Province grant. No award number.
22 No documents, things of that nature. Okay. Again, we
23 showed you all that evidence I just listed. I won't go
24 through that again.

25 The defense's own witness, Miss Pericak, said of

1 course she sees award letters. Of course. Award letters,
2 award numbers, one of those terms. But minutes later,
3 she's never seen one from China. She has no idea what that
4 would look like. She couldn't possibly know a Chinese
5 grant from the Guangdong Province of China, what that award
6 letter, what that award number, what it even -- does it
7 even exist? She doesn't know. She has no idea.

8 Talked about that one. Guangdong, again.

9 Shenzhen. Shenzhen University. Defendant doesn't
10 live and work in China. He only travels to China a few
11 times. Right? That's part of their argument. The defense
12 wants you to believe he is just getting paid for travel.
13 Like a per diem. They put up the State Department per
14 diem. Who gets reimbursed for travel they don't take?
15 That makes no sense. You get paid monthly, every month for
16 years, because you have a relationship -- in this case, a
17 contract -- with the other partner. You don't get
18 reimbursed for travel when you are not travelling.

19 No work permit. Nothing in that contract said that
20 he had to work in China. Nothing. Nothing in that
21 contract was conditioned on receiving a work permit. The
22 face of that document. Nothing.

23 The better proof is the bank account. Gets paid.
24 And in his own words in the recording, he admits to getting
25 paid 2,000 dollars a month from Shenzhen. That is evidence

1 of a contractual relationship. Some sort of relationship
2 with Shenzhen University. And we saw the contract with all
3 of the benefits and the perks and the research obligations
4 that are contained in there.

5 And you also saw his employee ID card, before I
6 forget that one.

7 "Guest Professor" on the Biosketch. This is a big
8 piece of their argument. Right? Yeah, guest professor's
9 on the Biosketch. That's not even true. He's not a guest
10 professor at Shenzhen University. The contract says
11 specially-appointed professor. Full-time. He's not a
12 guest professor. So that, in and of itself, is not true.

13 The contract also references a previous contract.
14 To the extent it may have existed, it annulled what you can
15 reasonably infer may have been a guest professorship.

16 You heard from two witnesses at NSF. Guest
17 professorship means nothing. We have no idea how much
18 money is involved, how much time commitment is involved.
19 Tells them nothing. That's why they have another part of
20 the application. The application is not difficult. He was
21 able to fill it out when he was willing to tell NSF about
22 the specific thing in there. That is not hard. That's why
23 that part of the application is there.

24 Okay. I talked about that one. Only got a few
25 left. I'm going to make it.

1 The defense admits, they concede, Current and
2 Pending, that part of the application is about research.
3 Exactly. Look at the Shenzhen contract. It is loaded with
4 research obligations that he was required by law to
5 disclose to NSF.

6 Defense tells you what NSF cares about in the
7 application process. They're telling you what's important,
8 what matters. Just remember the testimony from Dr. Keiser
9 and Dr. Ou. They are the ones who can tell you, with
10 authority, what matters and why to NSF.

11 The Proposal Checklist. Again, the defense is
12 asking you to abandon common sense. The Proposal
13 Checklist, on its face, says this is a transmittal form.
14 Transmittal form. It is the cover page to the stuff it is
15 transmitting. The proposal. That is the purpose of the
16 document.

17 When the proposal is submitted, the Checklist is on
18 top. Right there. We have dissected enough everyday words
19 like "all" and "current," "transmittal." I'll leave it
20 there.

21 And we have one. SIU-C is understaffed and
22 underbudgeted. Okay. That's the third -- that's the third
23 point. Right? It is literally everyone else's fault but
24 his. SIU-C is understaffed, therefore, that somehow
25 absolves him from lying on this document. Maybe it also

1 absolves him from lying to the IRS. I don't know.

2 SIU's internal policies, their budget, all of those
3 things do not matter. He made the choice. He chose to lie
4 on that document. He knew that he had positions outside
5 the United States. He knew that he had research
6 obligations and time commitments and funding.

7 COURTROOM DEPUTY: Time.

8 MR. SHUGERT: The Government asks you to find him
9 guilty on all Counts. Thank you.

10 THE COURT: Okay. Members of the jury, once you
11 are all in the jury room, the first thing you should do is
12 choose a presiding juror. The presiding juror should see
13 to it that your discussions are carried on in an organized
14 way and that everyone has a fair chance to be heard. You
15 may discuss the case only when all jurors are present.

16 Once you start deliberating, do not communicate
17 about the case or your deliberations with anyone except
18 other members of your jury. You may not communicate with
19 others about the case or your deliberations by any means.
20 This includes oral or written communication, as well as any
21 electronic method of communication, such as a telephone,
22 cell phone, smart phone, iPhone, Blackberry, computer, text
23 messaging, instant messaging, the internet, chat rooms,
24 blogs, websites or services like Facebook, LinkedIn,
25 YouTube, Instagram, Snapchat, Twitter, or any other method

1 of communication.

2 If you need to communicate with me while you are
3 deliberating, send a note through the court security
4 officer. The note should be signed by the presiding juror,
5 or by one or more members of the jury. To have a complete
6 record of this trial, it is important that you do not
7 communicate with me except by written note. I may have to
8 talk to the lawyers about your message, so it may take some
9 time to get back to you. You may continue your
10 deliberations while you wait for my answer. Please be
11 advised that transcripts of trial testimony are not
12 available to you. You must rely on your collective memory
13 of the testimony.

14 If you send me a message, do not include the
15 breakdown of any votes you may have conducted. In other
16 words, do not tell me that you are split 6-6, or 8-4, or
17 whatever your vote happens to be.

18 Verdict forms have been prepared for you. You will
19 take these forms with you to the jury room.

20 When you have reached unanimous agreement, your
21 presiding jury juror will fill in, date, and sign the
22 verdict forms. Each of you will sign them. Advise the
23 court security officer once you have reached a verdict.
24 And when you come back to the courtroom, I will read the
25 verdict aloud.

1 The verdict must represent the considered judgment
2 of each juror. Your verdict, whether it is guilty or not
3 guilty, must be unanimous.

4 You should make every reasonable effort to reach a
5 verdict. In doing so, you should consult with each other,
6 express your own views, and listen to your fellow jurors'
7 opinions. Discuss your differences with an open mind. Do
8 not hesitate to re-examine your own view and change your
9 opinion if you come to believe it is wrong. But you should
10 not surrender your honest beliefs about the weight or
11 effect of the evidence just because of the opinions of your
12 fellow jurors or just so that there can be a unanimous
13 verdict.

14 The twelve of you should give fair and equal
15 consideration to all the evidence. You should deliberate
16 with the goal of reaching an agreement that is consistent
17 with the individual judgment of each juror. You are
18 impartial judges of the facts. Your sole interest is to
19 determine whether the Government has proved its case beyond
20 a reasonable doubt.

21 So, members of the jury, this is how we're going to
22 proceed. We're going to go ahead and actually break or
23 recess, let you go to lunch. When you come back, then you
24 will retire to the jury room to begin your deliberations.
25 Because we'll have to swear in the court security officer;

1 once I swear him in, you can't go anywhere.

2 So, we'll wait -- and they won't let you. So, we
3 will wait -- we'll go ahead and do lunch. I'll have you
4 come back in at 12:30. We will come back into the
5 courtroom at 12:30, swear in the court security officer,
6 and then the jurors will be led to the jury room to begin
7 deliberations.

8 Miss Hurst will then instruct them on the
9 electronic exhibit issues and then they will start.

10 So, we'll be in recess until 12:30. We'll come
11 back out at 12:30.

12 (Proceedings continued in open court, defendant
13 present; jury not present.)

14 THE COURT: I know we had a discussion yesterday
15 about whether the stipulations went back. We instructed
16 them on stipulations but I'm going to let them go back.

17 MR. VERSEMAN: Your Honor, may I ask a question?
18 At what point -- does the Court dismiss the alternates? Do
19 they do that when we come back?

20 THE COURT: I'll do that when we have a verdict,
21 Mr. Verseman. I do that when we have a verdict. I'm not
22 going to discharge them until we have a verdict.

23 MR. VERSEMAN: Okay.

24 MR. LINEHAN: We'd like to renew our Rule 29 Motion
25 as to the remaining Counts.

1 THE COURT: You have seven days to do that, don't
2 you?

3 MR. LINEHAN: That's correct, Your Honor. Just
4 wanted to renew it prior to the jury coming back.

5 THE COURT: Okay. It's renewed. It's denied.

6 MR. LINEHAN: Thank you, Your Honor.

7 THE COURT: Okay.

8 (Court is recessed from 11:44 a.m. to 12:30 p.m.)

9 (Proceedings continued in open court, defendant and
10 jury present.)

11 THE COURT: Okay. Miss Hurst, could you swear in
12 the court security officer?

13 COURTROOM DEPUTY: Yes.

14 Please raise your right hand to be sworn.

15 (Court security officer sworn by courtroom deputy.)

16 THE COURT: Okay. So, members of the jury, through
17 Juror No. 12, you are going to be led into the jury room
18 now. In a few minutes, Miss Hurst will be back to give you
19 instructions on how to use the electronic exhibit
20 equipment, and then you will begin your deliberations.

21 The alternates, Jurors No. 13 and 14, you have not
22 been discharged at this point but, of course, you do not
23 deliberate with the jurors unless you need to replace one.
24 we're going to have you remain in the courtroom, the two of
25 you. You will -- the courtroom will be clear while the

1 rest of the jury is deliberating. You will be the only two
2 in here, and you will be free to move around unmasked.
3 Make yourself comfortable.

4 Miss Hurst will make sure, whatever you need, if
5 you need to use the restroom. So, this will be where you
6 hang out. So, when the jurors go into the jury room now,
7 I'll ask that you just stay where you are.

8 COURTROOM DEPUTY: All rise.

9 (Jury out at 12:33 p.m. to commence deliberations.)

10 (Notification of verdict at 4:20 p.m.)

11 (Proceedings continued in open court, defendant and
12 jury present.)

13 COURTROOM DEPUTY: Please be seated.

14 THE COURT: I have been advised that the jury has
15 reached a verdict.

16 Who speaks as the foreperson? Juror No. 1?

17 FOREPERSON: Yes.

18 THE COURT: Has the jury reached a unanimous
19 verdict, ma'am?

20 FOREPERSON: They have, Your Honor.

21 THE COURT: Could you hand the forms to the court
22 security officer?

23 FOREPERSON: (Complies.)

24 (Pause.)

25 THE COURT: The forms are properly completed and I

1 will now publish the jury's verdict.

2 Mr. Xiao, could you please stand?

3 In the case of the United States of America versus
4 MingQing Xiao:

5 As to Count 3: We, the jury, find the defendant
6 MingQing Xiao not guilty of False Statement, as charged in
7 Count 3 of the Indictment.

8 As to Count 4: We, the jury, find the defendant
9 MingQing Xiao guilty of False Statement on Tax Return, as
10 charged in Count 4 of the Indictment.

11 As to Count 5: We, the jury, find the defendant
12 MingQing Xiao guilty of Fraud or False Statement on Tax
13 Return, as charged in Count 5 of the Indictment.

14 As to Count 6: We, the jury, find the defendant
15 MingQing Xiao guilty of Fraud or False Statement on Tax
16 Return, as charged in Count 6 of the Indictment.

17 As to Count 7: We, the jury, find the defendant
18 MingQing Xiao guilty of Failure to File Report of Foreign
19 Bank Account, as charged in Count 7 of the Indictment.

20 I will now poll the jurors.

21 (Whereupon, the jury was polled and the verdict
22 rendered unanimous.)

23 THE COURT: Based on the polling of the jurors, I
24 will direct the Clerk to file and record the verdict.

25 You may be seated.

1 Members of the jury, including the alternates, you
2 are now discharged from your service. On behalf of the
3 United States District Court for the Southern District of
4 Illinois, I want to thank you for your service. You have
5 been engaged and listened to a lot of evidence over the
6 last week and a half, but I know that you were committed to
7 performing your duties and you did that.

8 I'm going to ask you to return to the jury room for
9 just a short time so that Miss Hurst can give you your
10 paperwork and process you out, and then we'll get you on
11 your way. Again, thank you.

12 And I know I speak, also, for counsel for both
13 parties in this case that they appreciate your service.

14 Thank you.

15 (Proceedings continued in open court, defendant
16 present.)

17 THE COURT: Be seated.

18 Sentencing will be set in this case for August 11,
19 2022, at 9:30 a.m.

20 Dr. Xiao, Probation will prepare and file a
21 Presentence Investigation Report to assist me in sentencing
22 you in this case. You will receive a copy of that report
23 and have an opportunity to review it with counsel.

24 Included in that report will be Proposed Conditions
25 of Supervised Release. You will also have an opportunity

1 to provide information through Probation to be included in
2 that report for my consideration and to have counsel
3 present with you at that time.

4 As it relates to custody status pending sentencing.
5 I believe Dr. Xiao was on his own recognizance. I have not
6 had any issues or notification of any issues with his
7 compliance.

8 Mr. Reed, what is the Government's position?

9 MR. REED: No objection to continued -- continuing
10 release, Judge.

11 THE COURT: And so I am going to allow Dr. Xiao to
12 remain on release pending sentencing.

13 Dr. Xiao, you, of course, are obligated to continue
14 to comply with whatever Conditions that have been imposed.
15 And, obviously, if you fail to do so, your release status
16 could be revoked and you could be detained pending
17 sentencing.

18 Anything else we need to take up at this time from
19 the Government's standpoint?

20 MR. REED: No, Judge. Thank you.

21 THE COURT: Mr. Poscablo?

22 MR. POSCABLO: Yes, Your Honor. We're wondering if
23 the Court would indulge us with an extended briefing
24 period. I think we have 14 days, under the statute. We
25 would ask for a month?

1 THE COURT: For?

2 MR. POSCABLO: One moment, Your Honor. (Pause.)

3 For our Motion for Judgment Notwithstanding the Verdict,

4 Your Honor.

5 THE COURT: Yes.

6 MR. POSCABLO: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MR. POSCABLO: Not from the defense.

9 THE COURT: I just -- I do want to -- before we
10 recess and end here, I do want to thank counsel on both
11 sides for your professionalism and your civility. It was a
12 difficult case and all of you are very vigorous advocates,
13 but I believe you did so respectfully and professionally
14 and the Court appreciates that.

15 All right. We are in recess.

16 (Court adjourned at 4:36 p.m.)

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REPORTER'S CERTIFICATE

I, Christine Dohack LaBuwi, RDR, CRR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported with mechanical stenography the proceedings contained in pages 999-1099; and that the same is a full, true, correct and complete transcript from the record of proceedings in the above-entitled matter.

DATED this 12th day of May, 2022,

s/Christine Dohack LaBuwi, RDR, CRR

Christine Dohack LaBuwi, RDR, CRR